SUPREME COURT, U.S.
JAN 28 1972
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-452

CATHERINE J. HEALY, *et al.*,
Petitioners,

v.

F. DON JAMES, *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

APPENDIX

Washington D C · THIEL PRESS 202 393-0625

PETITION FOR CERTIORARI FILED SEPTEMBER 29, 1971
CERTIORARI GRANTED DECEMBER 7, 1971

INDEX

Relevant Docket Entries 1

Petitioners' Substituted Verified Complaint 3

Exhibit A 13
Exhibit C 14
Exhibit D 14
Exhibit E 16

Answer to Substituted Complaint 17

Stipulation of Facts 19

Transcript of Hearing 25
Errata and Miscellaneous 26
Hearing Officer Exhibit G 78
Hearing Officer Exhibit H 90
Hearing Officer Exhibit L 92
Hearing Officer Exhibit N 93
Hearing Officer Exhibit O 94
Hearing Officer Exhibit P 96
Appellants' Exhibit No. 1 101

Letter From F. Don James of 7/10/70 103

Opinions 105

RELEVANT DOCKET ENTRIES

1970

February 20	Complaint filed. . . Affidavit and Verification filed. Motion for Preliminary Injunction filed. Motion for Order to Show Cause filed.
March 9	Hearing before the Court: Plaintiff and Defendant stipulate as to facts—written stipulation will be filed. Plaintiff will file substitute complaint by March 10 . . .
March 11	Petitioner's Substituted and Verified Complaint, filed at Hartford.
March 23	Answer to Substituted Complaint filed.
March 23	Hearing - Oral Arguments . . . Decision Reserved.
April 24	Memorandum of Decision entered. A hearing is hereby ordered to be held upon reasonable notice to the parties, which shall be conducted by President James, or a hearing officer duly designated by him and acting in his stead. All of the plaintiffs in this action shall be afforded an opportunity to be heard and shall be entitled to cross-examine witnesses; said hearing shall be conducted in a climate of respectful civility and record thereof made. Said hearing shall take place within thirty (30) days of this order. This Court shall retain jurisdiction of this action for the entry of such further orders or judgments by the Court as may be necessary and appropriate. Clarie, J. Copies mailed from Hartford to Attys Ahern and Pudlin & Silver. M-4/27/70.
July 23	Motion to Reject findings of defendant F. Don James and Grant Injunctive Relief, filed by Plaintiffs.

September 28	Hearing on Petitioner's Motion to Reject Findings of Defendant F. Don James and Grant Injunctive Relief, filed by Plaintiffs.
September 28	Hearing on Petitioner's Motion to Reject Findings of Defendant F. Don James and Grant Injunctive Relief. "Decision Reserved."
October 29	Ruling on Motion to reject findings and and summary judgment, entered at Hartford. "The Court will treat the pending motion, as if cross-motions for summary judgment had been filed by the parties; and it finds the plaintiffs' constitutional claims are without merit, * * *. The plaintiffs' motion is denied; summary judgment is granted to the defendants and the action is dismissed. SO ORDERED." Clarie, J. M-10/29/70. Copies mailed counsel from Hartford.
October 30	Judgment entered that "the plaintiffs take nothing, that the action be dismissed on the merits, and that the defendants recover of the plaintiffs their costs of action." Earl, C. M-10/30/70.
1971	
January 16	Notice of Appeal, filed by plaintiffs.
January 16	Bond on Appeal, filed by plaintiffs.

PETITIONERS' SUBSTITUTED VERIFIED COMPLAINT

* * * *

1. This is an action for an injunction as equitable relief as authorized by Title 42 U.S.C., Sections 1981 and 1983, and Title 28 U.S.C., Section 1343 (3) and (4), as well as Article III, Section 2, of the Constitution of the United States.

Injunctive relief is sought under Rule 65 of the Federal Rules of Civil Procedure.

2. The petitioners, Catherine J. Healy, Paul Peter Brown, Lawrence Stub, James Vincent Carey, Theodore Robert Testor, Joseph A. Knowles, Edward John O'Neil and Peter Browne, all being students at Central Connecticut State College located in New Britain, Connecticut, bring this action on behalf of themselves and all other students at said college similarly situated. All of the students at said college number in excess of five thousand persons, and it is, therefore, impracticable to bring them all before the Court. There are questions of law and facts presented herein which are common to the entire class of persons, involving rights under the First, Fifth and Fourteenth Amendments to the Constitution of the United States and the claims of the Petitioners herein are typical of the claims of said class; and Petitioners will fairly and adequately protect the interest of said class; and the Defendants have acted and refused to act in a manner generally applicable to the class, thereby making appropriate preliminary and final injunctive relief with respect to the class as a whole.

The maintenance of this class action is brought by Petitioners on behalf of themselves and all others of the class similarly situated pursuant to Rule 23(A) and (B) (2) of the Federal Rules of Civil Procedure.

14. On October 30, 1969, the aforesaid defendant Richard L. Judd, acting in his capacity as Executive Secretary of the Student Affairs Committee, notified the petitioner Mr. Lawrence Stub that the request for recognition by the Students for a Democratic Society had been disapproved by the defendant F. Don James, a copy of such memorandum being attached hereto as Petitioners' Exhibit C.

15. On October 30, 1969, the defendant F. Don James issued a memorandum in which he denied recognition of a local chapter of Students for a Democratic Society. In said memorandum, the defendant F. Don James stated as follows:

> "Though I have full appreciation for the action of the Student Affairs Committee and the reasons stated in their minutes for the majority vote recommending approval of a local chapter of Students for a Democratic Society carries full and unmistakable adherence to at least some of the major tenets of the national organization, loose and divided though that organization may be. The published aims and philosophy of the Students for a Democratic Society, which include disruption and violence, are contrary to the approved policy (by faculty, students, and administration) of Central Connecticut State College which states:
>
> > 'Students do not have the right to invade the privacy of others, to damage the property of others, to disrupt the regular and essential operation of the college, or to interfere with the rights of others.'
>
> The further statement on the request for recognition that 'CCSC Students for a Democratic Society are not under the dictates of any National organization' in no way clarifies why if a group intends to follow the established policy of the college, they wish to become a local

chapter of an organization which openly repudiates such a policy.

Freedom of speech, academic freedom on the campus, the freedom of establishing an open forum for the exchange of ideas, the freedoms outlined in the Statement on Rights, Freedoms, and Responsibilities of Students that 'college students and student organizations shall have the right to examine and discuss all questions of interest to them, to express opinion publicly and privately, and to support causes by orderly means. They may organize public demonstrations and protest gatherings and utilize the right of petition' — these are all precious freedoms that we cherish and are freedoms on which we stand. To approve any organization or individual who joins with an organization which openly repudiates those principles is contrary to those freedoms and to the approved 'Statement on the Rights, Freedoms, and Responsibilities of Students' at Central."

A copy of said memorandum is attached hereto as Petitioners' Exhibit D.

16. On November 6, 1969, about fifteen students at Central Connecticut State College, some being amongst the eight Petitioners and some not being amongst the eight Petitioners herein, met at a coffee shop on said campus, said coffee shop being under the general direction and administration of the said College. The avowed purpose of said meeting was to discuss the action of the defendant F. Don James of October 30, 1969, wherein recognition was denied to the local chapter of Students for a Democratic Society.

17. While said students were meeting, they were approached by the defendants Richard L. Judd and Cletus Clow who informed them that they could not hold said meeting and told them to "cease and desist" from meeting on col-

lege property. The defendant Richard L. Judd left with said students a written memorandum to the aforesaid effect, said written memorandum being attached hereto as Petitioners' Exhibit E.

18. At all times pertinent hereto, the Petitioners followed the procedure set forth by the administration to obtain recognition for the aforesaid chapter of Students for a Democratic Society.

19. Prior to October 30, 1969, the defendants F. Don James and Richard L. Judd were informed by the Petitioners, or some of them, that the proposed local chapter of Students for a Democratic Society would in no way be affiliated with any national organization also known by the same name (SDS) and would hold no allegiance to any officer of any such national organization.

20. The Petitioners herein are representative parties on behalf of all students at Central Connecticut State College who are engaged in rights protected under the First, Fifth and Fourteenth Amendments to the United States Constitution; that the members of the class are so numerous that joinder of all members is impracticable; that there are questions of law or fact common to the entire class; that the claims of the representative parties are typical of the claims of said class; that the representative parties will fairly and adequately protect the interests of the said class; and that the defendants have acted or refused to act on grounds generally applicable to the class, thereby making final injunctive relief appropriate with respect to the class as a whole.

21. The defendants and/or their agents, servants, employees and others under their direction and control and each of them, separately and in concert, by denying official recognition as a student organization on campus to the local chapter of Students for a Democratic Society at Central Connect-

icut State College are depriving and threatening to deprive the Petitioners and all other members of said class similarly situated of their rights of freedom of speech, press and assembly secured to them by the First and Fourteenth Amendments to the United States Constitution.

22. Numerous organizations, political and non-political in nature, have been in the past recognized by the administration of the said Central Connecticut State College as official campus student organizations and are currently operating as such. By denying such recognition to the aforesaid Students for a Democratic Society chapter, the defendants and/or their agents, servants and employees acted arbitrarily, unreasonably and capriciously in violation of the rights of the Petitioners and all other members of said class similarly situated secured to them by the Fourteenth Amendment to the United States Constitution.

23. By denying recognition to Students for a Democratic Society as an approved campus organization, the defendants and/or their agents, servants, employees and others under their direction and control and each of them, separately and in concert, have deprived the Petitioners and all other members of said class similarly situated of their rights to the equal protection of the law as secured to them by the Fourteenth Amendment to the United States Constitution.

24. On or about December 1, 1969, a publication known as "The Central Alumnus", Volume 2, No. 2, Winter, 1970, the official publication of the alumni organization of the aforesaid Central Connecticut State College, contained therein an article signed by the defendant F. Don James, in which the aforesaid F. Don James was quoted as saying:

"Another action I wish to share with you is my veto of a student-faculty committee recommendation that a

chapter of the Students for a Democratic Society be allowed at Central.

I cannot sanction an organization that openly advocates the destruction of the very ideals and freedoms upon which the academic life is founded. In denying the SDS official recognition, I have emphasized that the philosophies, actions and violence of that organization are counter to the official policy of the College. That policy, stated in the Statement of Student Rights, Freedoms and Responsibilities, and approved by the students, faculty and administration is:

'Students do not have the right to invade the privacy of others, to damage property of others, to disrupt the regular and essential operation of the college, or to interfere with the rights of others.'"

25. At all times pertinent hereto, the aforesaid Board of Trustees had knowledge of the action of the aforesaid defendants F. Don James, Richard L. Judd and Cletus Clow.

26. The effect of the actions of all of the defendants herein has been to impose prior restraints upon the rights of the Petitioners and other members of said class similarly situated and to violate their rights under the First and Fourteenth Amendments of freedom of speech, press and assembly, and subject the Petitioners and other members of said class similarly situated to a denial of their rights under the Fifth and Fourteenth Amendments to the United States Constitution and to further subject the Petitioners and other members of said class similarly situated to a deprivation of their rights of due process of law in violation of the provisions of the Fifth and Fourteenth Amendments to the Constitution of the United States.

27. The Petitioners and others similarly situated have the right to organize a chapter for Students for a Democratic

Society, which right is presumptively protected by the First and Fourteenth Amendments to the United States Constitution. The denial of such recognition and the aforesaid "cease and desist" order threatened their rights under the United States Constitution and have a "chilling effect" on the exercise of First Amendment freedoms.

28. By reason of the conduct of the defendants as aforesaid, the civil rights of the Petitioners and other members of said class similarly situated under the First, Fifth and Fourteenth Amendments to the United States Constitution have been violated to their irreparable harm. The Petitioners and other members of said class similarly situated have no adequate remedy at law, and immediate and irreparable injury, loss and damage will result to the Petitioners and others similarly situated if a preliminary and permanent injunction is not issued ordering the defendants to afford official recognition to the chapter of the Students for a Democratic Society as an official campus student organization.

WHEREFORE, The Petitioners pray:

1. That this Court assume jurisdiction of this cause.

2. That this Court adjudge and declare the determination and acts of the defendants as hereinbefore set forth in violation of the articles, amendments, regulations and usages as set forth above.

3. That this Court issue a preliminary injunction restraining and preventing the defendants and their agents, servants and employees from interfering with the Petitioners and others similarly situated from meeting as an organization and participating in the activities of a local chapter for Students for a Democratic Society.

4. That this Court issue a preliminary injunction ordering and directing all of the defendants herein to afford to the

Petitioners the right to form a chapter of Students for a Democratic Society and to afford such organization official recognition as a campus student organization.

5. That the Court issue a permanent injunction restraining and preventing the defendants and their agents, servants and employees from interfering with the Petitioners and others similarly situated from meeting as an organization and participating in the activities of a local chapter for Students for a Democratic Society.

6. That this Court issue a permanent injunction ordering and directing all of the defendants herein to afford to the Petitioners the right to form a chapter of the Students for a Democratic Society and to afford such organization official recognition as a campus student organization.

7. That this Court order such appropriate relief as shall be deemed just and proper.

PETITIONERS:

By ALVIN PUDLIN
Their Attorney
70 West Main Street
New Britain, Connecticut

By ABRAHAM S. SILVER
Their Attorney
70 West Main Street
New Britain, Connecticut

PETITIONERS' EXHIBIT A.

What follows is a brief statement of purpose of the group of students at CCSC who would like to form a local chapter of Students for a Democratic Society (S.D.S.).

1. Because the university is intended to be the arena of education, where there is an unfettered exchange of ideas, S.D.S. would provide *a forum* of discussion and self-education for students developing an analysis of American society and institutions, including higher education, and the world situation in general.

2. Because it is felt that ideas without parallel in deeds are empty and ephemeral, and that no area of life exists in a vacuum and unrelated to all other areas of life, S.D.S. would provide *an agency* for integrating thought with action so as to bring about constructive changes in the university, in American life, and the world.

3. Because of the responsibility of all peoples for the welfare of others, S.D.S. would provide a *coordinating body* for relating the problems of leftist students and other groups, such as the student body as a whole, the working class, the black populace or whatever other individuals or groups in fact or potentially in accord with the purposes of the CCSC chapter of S.D.S.

Officers: Lawrence Stub, Frank Ziecardi.

Procedures: (1) meetings once a week. (2) membership completely open to students and faculty. (3) *voluntary dues.* (4) elections held regularly (5) CCSC Students for a Democratic Society are not under the dictates of any National organization.

PETITIONERS' EXHIBIT C.

INTERDEPARTMENT MAIL

October 30, 1969

To: Mr. Lawrence Stub, Dr. Haines Brown

From: Richard L. Judd, Executive Secretary, Student Affairs Committee

This is to inform you that the request for the recognition of a chapter of the Students for a Democratic Society has been disapproved by the President of the College.

I am attaching a copy of the President's action in this regard.

RLJ/ab
enc.

PETITIONERS' EXHIBIT D.

MEMORANDUM

To: Dean Richard L. Judd, Executive Secretary, Student Affairs Committee

From: F. Don James

Date: October 30, 1969

Subj.:

In reply to your memorandum of October 16, 1969, concerning the recommendation of the Student Affairs Committee, I am pleased to approve the recognition of:

1. The Commuter Club as a campus organization with Mr. Henry S. Enck as faculty adviser.

2. The Physical Education Majors Association as a campus organization with Miss Mary Hoyle as faculty adviser.

3. The Liberal Party as a campus organization with Dr. Charles Kerr as faculty adviser.

4. The Italian Club (Il Circolo Italiano) as a campus organization with Mr. Giovanni Lonardo as faculty adviser.

I am disapproving recognition of a local chapter of Students for a Democratic Society.

Though I have full appreciation for the action of the Student Affairs Committee and the reasons stated in their minutes for the majority vote recommending approval of a local chapter of Students for a Democratic Society, it is my judgment that the statement of purpose to form a local chapter of Students for a Democratic Society carries full and unmistakable adherence to at least some of the major tenets of the national organization, loose and divided though that organization may be. The published aims and philosophy of the Students for a Democratic Society, which include disruption and violence, are contrary to the approved policy (by faculty, students, and administration) of Central Connecticut State College which states:

> "Students do not have the right to invade the privacy of others, to damage the property of others, to disrupt the regular and essential operation of the college, or to interfere with the rights of others."

The further statement on the request for recognition that "CCSC Students for a Democratic Society are not under the dictates of any National organization" in no way clarifies why if a group intends to follow the established policy of the Col-

3. All of the Petitioners herein, at all times pertinent hereto, were and are students at Central Connecticut State College, an institution of the State of Connecticut.

4. The defendant F. Don James, at all times pertinent hereto, was and is the acting Dean of Student Affairs at Connecticut State College and as such was and is its chief administrative officer.

5. The defendant Richard L. Judd, at all times pertinent hereto, was and is the actiong Dean of Student Affairs at Central Connecticut State College.

6. The defendant Cletus Clow, at all times pertinent hereto, was and is the Dean of Administrative Affairs of Central Connecticut State College.

7. The defendants Bernice C. Niejadlik, John F. Robinson, Thomas Grasso, Frank P. Cammarano, Clark Edwin Creed, Richard Gurney, Francis W. Hogan, Ernest A. Johnson, Laura Johnson, Alvin B. Wood, James F. McNally and James E. Dyer, at all times pertinent hereto, were and are all members of the Board of Trustees for the State Colleges of Connecticut, and as such Board determine policies for the administration of said college.

8. On September 16, 1969, a notice was published in the Central Connecticut State College *Recorder*, being the student newspaper at said college, announcing a forthcoming meeting to be held for the purposes of forming an organization known as the Students for a Democratic Society (SDS).

9. On a date after September 16, 1969, said meeting was held and the named Petitioners, or some of them, were present.

10. At said meeting, it was voted to request the administration at the aforesaid Central Connecticut State College

for official recognition as a student organization on the aforesaid campus.

11. On a date after September 17, 1969, the Petitioners, or some of them, sent to the defendant Richard L. Judd a written statement of the purpose of the aforesaid organization to be known as a local chapter of Students for a Democratic Society, which notice is attached hereto as Petitioners' Exhibit A.

12. Prior to September 9, 1969, the administration of Central Connecticut State College with the approval of the faculty issued a publication entitled "Statement on Rights, Freedoms and Responsibilities of Students." Section V. E. of said statement reads as follows:

> "College students and student organizations shall have the right to examine and discuss all questions of interest to them, to express opinion publically (sic) and privately, and to support causes by orderly means. They may organize public demonstrations and protest gatherings and utilize the right of petition. Students do not have the right to deprive others of the opportunity to speak or be heard, to invade the privacy of others, to damage the property of others, to disrupt the regular and essential operation of the college, or to interfere with the rights of others."

A copy of said Statement on Rights, Freedoms and Responsibilities of Students is attached hereto as Petitioners' Exhibit B.

13. On October 13, 1969, the Student Affairs Committee at said Central Connecticut State College by a vote of six to two voted to recommend to the aforesaid defendant F. Don James that the SDS chapter be given official recognition by the administration as a campus organization.

4. The defendants admit so much of paragraph 8 as alleges that on September 16, 1969, a notice was published in the Central Connecticut State College *Recorder*, being the student newspaper at said college, announcing a forthcoming meeting to be held for the purpose of forming an organization; all the remaining allegations are denied.

5. The defendants admit so much of Paragraph 22 as alleges that numerous organizations, political and non-political in nature, have been in the past recognized by the administration of the said Central Connecticut State College as official campus student organizations and are currently operating as such; all the remaining allegations are denied.

DEFENDANTS

ROBERT K. KILLIAN
Attorney General

F. MICHAEL AHERN
Assistant Attorney General

BERNARD F. McGOVERN, JR.
Assistant Attorney General

Their Attorneys

30 Trinity Street
Hartford, Connecticut 06115

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed to all attorneys of record on the 19th day of March, 1970.

F. MICHAEL AHERN
Assistant Attorney General

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CATHERINE J. HEALY ET ALS, PETITIONERS

v.

F. DON JAMES ET ALS, DEFENDANTS

CIVIL ACTION NO. 13721

MARCH 10, 1970

STIPULATION OF FACTS

The parties hereto agree and stipulate that the following are all of the facts in the above captioned matter:

1. All of the Petitioners herein, at all times pertinent hereto, were and are students at Central Connecticut State College, an institution of the State of Connecticut.

2. The defendant F. Don James, at all times pertinent hereto, was and is the President of the aforesaid Central Connecticut State College and as such was and is its chief administrative officer.

3. The defendant Richard L. Judd, at all times pertinent hereto, was and is the acting Dean of Student Affairs at Central Connecticut State College.

4. The defendant Cletus Clow, at all times pertinent hereto, was and is the Dean of Administrative Affairs of Central Connecticut State College.

5. The defendants Bernice C. Niejadlik, John F. Robinson, Thomas Grasso, Frank P. Cammarano, Clark Edwin Creed, Richard Gurney, Francis W. Hogan, Ernest A. Johnson, Laura Johnson, Alvin B. Wood, James F. McNally, and James E. Dyer, at all times pertinent hereto, were and are all

of the members of the Board of Trustees for the State Colleges of Connecticut, and as such Board determine policies for the administration of said college.

6. On September 16, 1969, a notice was published in the Central Connecticut State College *Recorder*, being the student newspaper at said college, announcing a forthcoming meeting to be held for the purposes of forming an organization known as the Students for a Democratic Society (SDS).

7. On a date after September 16, 1969, said meeting was held and the named Petitioners, or some of them, were present.

8. At said meeting, it was voted to request the administration at the aforesaid Central Connecticut State College for official recognition as a student organization on the aforesaid campus.

9. On a date after September 17, 1969, the Petitioners, or some of them, sent to the defendant Richard L. Judd a written statement of the purpose of the aforesaid organization to be known as a local chapter of Students for a Democratic Society, which notice is attached hereto as Petitioners' Exhibit A.

10. Prior to September 9, 1969, the administration of Central Connecticut State College with the approval of the faculty issued a publication entitled "Statement on Rights, Freedoms and Responsibilities of Students. Section V. E. of said statement reads as follows:

> "College students and student organizations shall have the right to examine and discuss all questions of interest to them, to express opinion publically (sic) and priyately, and to support causes by orderly means. They may organize public demonstrations and protest gather-

ings and utilize the right of petition. Students do not have the right to deprive others of the opportunity to speak or be heard, to invade the privacy of others, to damage the property of others, to disrupt the regular and essential operation of the college, or to interfere with the rights of others."

A copy of said Statement on Rights, Freedoms and Responsibilities of Students is attached hereto as Petitioners' Exhibit B.

11. On October 13, 1969, the Student Affairs Committee at said Central Connecticut State College by a vote of six to two voted to recommend to the aforesaid defendant F. Don James that the SDS chapter be given official recognition by the administration as a campus organization.

12. On October 30, 1969, the aforesaid defendant Richard L. Judd, acting in his capacity as Executive Secretary of the Student Affairs Committee, notified the petitioner Mr. Lawrence Stub that the request for recognition by the Students for a Democratic Society had been disapproved by the defendant F. Don James, a copy of such memorandum being attached hereto as Petitioners' Exhibit C.

13. On October 30, 1969, the defendant F. Don James issued a memorandum in which he denied recognition of a local chapter of Students for a Democratic Society. In said memorandum, the defendant F. Don James stated as follows:

"Though I have full appreciation for the action of the Student Affairs Committee and the reasons stated in their minutes for the majority vote recommending approval of a local chapter of Students for a Democratic Society, it is my judgment that the statement of purpose to form a local chapter of Students for a Democratic Society carries full and unmistakable adherence to at

least some of the major tenets of the national organization, loose and divided though that organization may be. The published aims and philosophy of the Students for a Democratic Society, which include disruption and violence, are contrary to the approved policy (by faculty, students, and administration) of Central Connecticut State College which states:

> 'Students do not have the right to invade the privacy of others, to damage the property of others, to disrupt the regular and essential operation of the college, or to interfere with the rights of others.'

The further statement on the request for recognition that 'CCSC Students for a Democratic Society are not under the dictates of any National organization' in no way clarifies why if a group intends to follow the established policy of the college, they wish to become a local chapter of an organization which openly repudiates such a policy.'

Freedom of speech, academic freedom on the campus, the freedom of establishing an open forum for the exchange of ideas, the freedoms outlined in the Statement on Rights, Freedoms and Responsibilities of Students that 'college students and student organizations shall have the right to examine and discuss all questions of interest to them, to express opinion publicly and privately, and to support causes by orderly means. They may organize public demonstrations and protest gatherings and utilize the right of petition' — these are all precious freedoms that we cherish and are freedoms on which we stand. To approve any organization or individual who joins with an organization which openly repudiates those principles is contrary to those freedoms and to the approved 'Statement on the Rights, Freedoms, and Responsibilities of Students' at Central."

A copy of said memorandum is attached hereto as Petitioners' Exhibit D.

14. On November 6, 1969, about fifteen students at Central Connecticut State College, some being amongst the eight Petitioners and some not being amongst the eight Petitioners herein, met at a coffee shop on said campus, said coffee shop being under the general direction and administration of the said College. The avowed purpose of said meeting was to discuss the action of the defendant F. Don James of October 30, 1969, wherein recognition was denied to the local chapter of Students for a Democratic Society.

15. While said students were meeting, they were approached by the defendants Richard L. Judd and Cletus Clow who informed them that they could not hold said meeting and told them to "cease and desist" from meeting on college property. The defendant Richard L. Judd left with said students a written memorandum to the aforesaid effect, said written memorandum being attached hereto as Petitioners' Exhibit E.

16. At all times pertinent hereto, the Petitioners followed the procedure set forth by the administration to obtain recognition for the aforesaid chapter of Students for a Democratic Society.

17. Prior to October 30, 1969, the defendants F. Don James and Richard L. Judd were informed by the Petitioners, or some of them, that the proposed local chapter of Students for a Democratic Society would in no way be affiliated with any national organization also known by the same name (SDS) and would hold no allegiance to any officer of any such national organization.

18. On or about December 1, 1969, a publication known as "The Central Alumnus," Volume 2, No. 2, Winter, 1970, the official publication of the alumni organization of the afore-

said Central Connecticut State College, contained therein an article signed by the defendant F. Don James, in which the aforesaid F. Don James was quoted as saying:

> "Another action I wish to share with you is my veto of a student-faculty committee recommendation that a chapter of the Students for a Democratic Society be allowed at Central.
>
> I cannot sanction an organization that openly advocates the destruction of the very ideals and freedoms upon which the academic life is founded. In denying the SDS official recognition, I have emphasized that the philosophies, actions and violence of that organization are counter to the official policy of the college. That policy, stated in the Statement of Student Rights, Freedoms and Responsibilities, and approved by the students, faculty and administration is:
>
> 'Students do not have the right to invade the privacy of others, to damage property of others, to disrupt the regular and essential operation of the college, or to interfere with the rights of others.' "

19. At all times pertinent hereto, the aforesaid Board of Trustees had knowledge of the action of the aforesaid defendant F. Don James, Richard L. Judd and Cletus Clow.

PETITIONERS:

By ALVIN PUDLIN
Their Attorney

By ABRAHAM SILVER
Their Attorney

DEFENDANTS

By F. MICHAEL AHERN
Their Attorney

REPORT
of the
HEARING OFFICER,
Richard L. Judd

In Re: *Healey, et al., v. James, et al.*
Civil Action 13721

Hearings Held on 19 and 25 May 1970,
Room 207, Administration Building,
CENTRAL CONNECTICUT STATE COLLEGE

Errata and Miscellaneous

1. P. 17, line 27, Exhibit "B" should be "G"
2. P. 19, line 27, Exhibit "H" should be "I"
3. Hearing Officer's Exhibit "J" was not used, and therefore Exhibit letters run from "I" to "K"
4. Hearing Officer's Exhibit Exhibit "A" (Judge Clarie's decision) is not supplied in this report, but is available from the U.S. District Court Clerk's Office, Hartford, Connecticut.
5. Hearing Officer's Exhibit Exhibits "G", "H" and "I" are included only with the original and Copy Nos. 1-4 of this report. Copies are available from the U.S. Government Printing Office.

TRANSCRIPTION OF TAPE RECORDING AND HEARING CONDUCTED BY R.L. JUDD, ON 19 MAY 1970

DEAN JUDD: Good morning ladies and gentlemen; Dr. F. Don James, President of Central Connecticut State College, has duly authorized and appointed me, Richard L. Judd, as the Hearing Officer in this case. In this capacity, I now call the hearing to order.

Let the record show that according to my timepiece we are starting at 10:01 a.m. on the 19th of May 1970. This hearing is being held in accord with the ruling handed down by the United States District Judge Honorable Emmet T. Clarie on the 24th of April 1970 in Civil Action No. 13721 re: *Healey, et al., v. James et al.*

Judge Clarie ordered that the College, upon reasonable notice to the parties involved, hold the hearing to resolve certain questions which were raised by the applicants in this said Civil Action against the said defendants. Such hearing would give the petitioners an opportunity to be heard, and upon the findings of the overall record of such a hearing, the President of the College, Dr. James, would make his deci-

sion as to whether or not the application met the existing policy standards of the College which would qualify the applicant club for official campus recognition.

Also, in accordance with Judge Clarie's decision, during such hearing, the College administration may question said applicants in order that certain ambiguities may be clarified as well as the creditability of the representations made by representatives of the applying organization.

In this regard, I would like to enter into the record as Hearing Officer's Exhibit A, Judge Clarie's decision dated April 27, 1970. Now, will the clerk please mark that as Hearing Officer's Exhibit A.

I would like the record also to show on the 7th of May 1970, notice was served to the following individuals, Catherine J. Healey, James Vincent Carey, Edward John O'Neil, Paul Peter Brown, Theodore Robert Tester, Joseph A. Knowles, Lawrence Stub, and Peter Browne, informing them of this hearing and requiring of them that they advise the Office of the Dean of Student Affairs of their intention to be present no later than 12 noon, daylight saving time on the 18th of May 1970. I would like the clerk to enter into the record as Hearing Officer's Exhibit B, a copy of said letter which was sent by certified receipt requested mail to aforementioned parties.

[2] I would like the record also to show that on the 7th of May 1970, a letter was sent to Attornies Abraham Silver and Alvin Pudlin, informing them of the hearing to be conducted on this date and also requiring that if they intended to represent the plaintiffs in this case, written notice must be received in the same manner as herein before described. I would like a copy of the letter to be entered in the record as Hearing Officer's Exhibit C. Will the clerk please so mark.

Let the record also show that on the date of 8 May 1970, the Hearing Officer in his capacity as Acting Dean of Student Affairs received a letter from Attorney Abraham Silver, acknowledging the Dean of Student Affairs' letter of 7 May and advising him that he would be pre-

lege, they wish to become a local chapter of an organization which openly repudiates such a policy.

Freedom of speech, academic freedom on the campus, the freedom of establishing an open forum for the exchange of ideas, the freedoms outlined in the Statement on Rights, Freedoms and Responsibilities of Students that "college students and student organizations shall have the right to examine and discuss all questions of interest to them, to express opinion publicly and privately, and to support causes by orderly means. They may organize public demonstrations and protest gatherings and utilize the right of petition" — these are all precious freedoms that we cherish and are freedoms on which we stand. To approve any organization or individual who joins with an organization which openly repudiates those principles is contrary to those freedoms and to the approved "Statement on the Rights, Freedoms, and Responsibilities of Students" at Central.

F. Don James
PRESIDENT

fdj: lp

PETITIONERS' EXHIBIT E.

INTERDEPARTMENT MAIL

November 6, 1969

To: Mr. Lawrence Stub, Dr. Haines Brown

From: Richard L. Judd — Acting Dean, Student Affairs

Notice has been received by this office of a meeting of the "C.C.S.C. - S.D.S. on Thursday — November 6 at 7:00 p.m. at the Devils' Den".

Such meeting may not take place in the Devils' Den of the Student Center nor in or on any other property of the

college since the C.C.S.C. - S.D.S. is not a duly recognized college organization.

You are hereby notified by this action to cease and desist from meeting on college property.

RLJ/ab

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF CONNECTICUT

CATHERINE J. HEALY ET ALS, PETITIONERS

v.

F. DON JAMES ET ALS, DEFENDANTS

CIVIL ACTION NO. 13721

ANSWER TO SUBSTITUTED COMPLAINT

1. Paragraphs 1, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 24, and 25 of the Substituted Complaint are admitted.

2. Paragraphs 20, 21, 23, 26, 27 and 28 of the Substituted Complaint are denied.

3. The defendants deny so much of paragraph two as alleges that they have acted and refused to act in a manner generally applicable to the class the plaintiffs purport to represent, thereby making appropriate preliminary and final injunctive relief; and also deny the inference that all of the students at Central Connecticut State College have reached their majority as have the petitioners herein; the remaining allegations are admitted.

sent to represent the plaintiffs at the time of the hearing. A copy of this letter is introduced as Hearing Officer's Exhibit D. Will the clerk please so mark.

Let the record also show that a letter to Mr. F. Michael Ahern, Assistant Attorney General for the State of Connecticut, was sent on the 7th of May 1970, advising him of the College's compliance with the order of the U.S. District Judge to hold the hearing on this date. A copy of this letter is introduced into the record as Hearing Officer's Exhibit E. Will the clerk please so mark.

I would like to introduce for the people present those who are in attendance as a part of the Hearing Officer's staff, Mr. David Hayes, as Director of Security, who will be serving as the Hearing Officer's bailiff, Mr. Thomas Gurnsey, who is the technician for our recording, and Mrs. Anne Balciunas, who will be serving as the clerk for the hearing.

I would also like the record to show that a complete transcript of this hearing will be available upon request from me as Hearing Officer at the cost of $1 per page which is deemed by the College to be a reasonable cost for such preparation.

Attorney Silver, are you present?

ATTORNEY SILVER: I'm present and I would like to make some opening remarks, if I may.

DEAN JUDD: O.K. Would you please, before you go into that, would—let me clear the record for those who are in attendance at the present time. It is correct that you are going to represent the applicants in this case?

[3] ATTORNEY SILVER: That is right.

DEAN JUDD: I would like those who are now present as plaintiffs and applicants to identify themselves when so called by the Hearing Officer. Let's see, Catherine J. Healey?

CATHERINE HEALEY: Present.

DEAN JUDD: O.K. Let the record show that Miss Healey is present.

Peter Browne? Mr. Browne is not present. Let the record please show. Edward J. O'Neil? All right, let the record show that Mr. O'Neil is not present. Paul Brown?

PAUL BROWN: Present.

DEAN JUDD: Let the record show that Mr. Brown in present. Joel Blumert? Let the record show that Mr. Blumert is not present. Theodore Tester? Let the record show that Mr. Tester is not present. I also have listed, on a letter from Paul Brown, dated on the 17th of May the following individuals who are also not present. Mr. Haines Brown; and I think that is the extent of my list.

I would like to enter into the record as Hearing Officer's Exhibit F, said letter.

May I have the names of the other individuals present in the room?

PERSON: Joe Bernacchia.

DEAN JUDD: Would you repeat that again?

PERSON: Joe Bernacchia.

DEAN JUDD: Joe Bernacchia; would you please spell that Mr. Bernacchia?

PERSON: Joe B-e-r-n-a-c-c-h-i-a.

PERSON: Philip Sena.

PERSON: Robert Stavnezer—S-t-a-v-n-e-z-e-r.

PERSON: Jerome Ackerman—A-c-k-e-r-m-a-n

DEAN JUDD: Mr. Counselor, are any of these people being presented as witnesses for the applicants?

ATTORNEY SILVER: They are not.

DEAN JUDD: They are not. All right, gentlemen, I will have to rule from the chair that the hearing is closed except to those designated by this office or designated by the applicant or plaintiffs in the case. Now, I would therefore have to request [4] that you leave the premises.

Let the record show that those who have been advised that were not either as witnesses for the plaintiffs at their request, did leave and did leave peacefully.

Mr. Counsel, do you expect that there will be any witnesses that are listed here that are not going to be present? I'll show you the list that Mr. Brown submitted.

ATTORNEY SILVER: Well, whoever is here is here.

DEAN JUDD: O.K. Is there any—that should be Exhibit F—would or do you expect any others to come before that you would like to have here that are not here?

ATTORNEY SILVER: I have no knowledge.

DEAN JUDD: O.K. Do any of the applicants have knowledge of the other parties that you listed?

MISS HEALEY: The rest of them are not here.

DEAN JUDD: Well, in the event that you felt that these people should be here, I would certainly entertain any leeway to have them here, and if you do feel later that they are required to answer any questions, that you would have, certainly would to entertain such a motion.

O.K. The applicant in this case is hereby identified as CCSC Local Chapter of Students for a Democratic Society, also known as SDS. Is this correct, counselor?

ATTORNEY SILVER: Well, I have some remarks to make in that connection.

DEAN JUDD: Would you care not to answer that question at this time?

ATTORNEY SILVER: I would rather not answer because I have a statement which I think will be specific and will cover it.

DEAN JUDD: O.K. Let me ask my next question. Who is going to present the case for the applicants?

ATTORNEY SILVER: Well, as far as I'm concerned, I will make all the remarks that have to be made. I'm not foreclosing any one of my people from speaking, but as far as I'm concerned, I have no reasons for them to make any statements.

DEAN JUDD: Well, let the record show that Attorney Silver will present the case on behalf of the applicants, how-

ever, he is not waiving right to have presentations made by the applicants if they so desire.

Would you then please proceed, Attorney Silver?

[5] ATTORNEY SILVER: Yes, I'd like to make some inquiries about the device by which the record is being made. Now, there's an instrument that's in front of me here and, frankly, I don't know how this thing works. I don't even know whether my voice is being recorded, so with your permission, Dean Judd, I'd like to ask a couple of questions of the technician.

DEAN JUDD: All right.

ATTORNEY SILVER: Your name is Gurnsey?

MR. GURNSEY: Yes.

ATTORNEY SILVER: Mr. Gurnsey, how is this record being made?

MR. GURNSEY: It's being tape recorded.

ATTORNEY SILVER: It's being what?

MR. GURNSEY: Tape recorded.

ATTORNEY SILVER: Do you know that your answer is being recorded at the present time?

MR. GURNSEY: Yes.

ATTORNEY SILVER: You know that?

MR. GURNSEY: Yes.

ATTORNEY SILVER: How do you know that?

MR. GURNSEY: Because I could see the sound on the level meter. Right now, this is not picking me up too well. It's picking up you and Mr. Judd very well.

ATTORNEY SILVER: But you don't know whether your voice is actually getting picked up at this time, is that right?

MR. GURNSEY: Well, right now it's being picked up, yes. It depends on how loudly I speak.

ATTORNEY SILVER: If you don't speak loudly, then your voice may not be picked up? Is that right?

MR. GURNSEY: That's right.

ATTORNEY SILVER: If you speak a little softer, then you don't know if it's being recorded? Is that correct?

MR. GURNSEY: I wouldn't be positive.

ATTORNEY SILVER: Now, after this hearing is terminated—

MR. GURNSEY: Do you want this played back?

[6] DEAN JUDD: Let the chair interrupt for a minute. Mr. Gurnsey, would you please stop the recording and play back the last five feet?

All right. Would you now proceed, Attorney Silver.

ATTORNEY SILVER: May I continue questioning Mr. Gurnsey?

DEAN JUDD: Yes, would you please indicate for me your line of reasoning in questioning our technician?

ATTORNEY SILVER: Yes. The reason is that a record of this hearing was directed by the court.

DEAN JUDD: Correct.

ATTORNEY SILVER: And It's most important and I'm raising a question as to whether this is an appropriate manner in which to record this hearing. This is the purpose of my questioning. And I very frankly have great reservations as to its propriety, but ultimately perhaps the court will have to determine whether the proper way, so the court should know what this device is doing. So, may I just ask him a couple more questions?

DEAN JUDD: Please do.

ATTORNEY SILVER: All right. Now, when this hearing is over, I assume that this will be reduced to writing. Is that—

DEAN JUDD: He would not be aware of that. I can answer that question for you.

ATTORNEY SILVER: It will be reduced to writing?

DEAN JUDD: A complete verbal transcription will be made of that tape. The tape will be preserved. We will duplicate the tape so there will be a second set in the event of anything might happen to the first, and these will be made available to either you or the Federal judge or the Attorney General of the State.

ATTORNEY SILVER: Now, when this hearing is over, who will take the possession of the tape?

DEAN JUDD: I will take possession of the tapes.

ATTORNEY SILVER: You will take possession of the tapes, I see.

DEAN JUDD: Now, relative to your one point, as to the judge just indicated a record shall be made in his ruling. Since we are not in a legal proceeding of the type and do have a steno typist available or other such forms of recording the session, the College has used in the past used tape recordings to gather comments in other hearings on which we have conducted and have found it [7] to be a satisfactory vehicle.

ATTORNEY SILVER: Well, for the record, I'm objecting to the use of this device because this device cannot talk back and tell me when it doesn't hear me and I just don't think as a legal proceeding that is adequate. I have no doubt that it's a useful device and may be appropriate for some occasions, but I do object to its use in this particular case.

DEAN JUDD: Now, let me indicate the Hearing Officer is going to overrule your objection. I wish your objection to be so noted in the tape recorded recording of this. Let me also indicate I would overrule your point relative to a legal proceeding. This is not a legal proceeding. We are having an administrative hearing which does not have all the rudiments of a adversary proceeding. I note your objection and it'll be in the record for the court review.

ATTORNEY SILVER: I thank you. Now, I would like to note that Dr. James, who is the party who will ultimately be required to make the findings resulting from this hear-

ing, is not in attendance. Notwithstanding—I withdraw that word—he is not in attendance and I object to a hearing being held in which the person who makes the finding is not here to receive the evidence. I think that it is improper because for the reason that the person making the finding is not in a position adequately to evaluate evidence when he receives it simply from a written record, assuming that the record will be accurate. So, I would say that on behalf of my clients, that we will be willing to defer this hearing in order to give Dr. James an opportunity to conduct it himself as I claim it should be in order to be done properly.

DEAN JUDD: Are you raising—number one, you are raising objection to Dr. James' not being here. You are aware, Mr. Silver, that Judge Clarie indicated that Dr. James could either—he ordered Dr. James to conduct a hearing or someone designated by him in view of the fact the President of the College may not have the time to conduct such a hearing.

ATTORNEY SILVER: Yes, I'm aware of it. I read it in the memorandum notwithstanding, I take the position that the hearing is not properly conducted notwithstanding Judge Clarie's statement.

DEAN JUDD: All right. Well, I'll overrule that first objection since I've been duly designated and appointed as the Hearing Officer. It is my responsibility to conduct it until otherwise ordered. The second point, are you motioning for a delay in the hearing until your objection could be reviewed by anyone?

[8] ATTORNEY SILVER: No, I'm only making a point that we are in fact proceeding, if we do proceed, and I assume that we will on the basis of your remark. I just like to make it clear that we have not waived our claim and I take exception to your ruling notwithstanding Judge Clarie's remark in his memorandum that this hearing could be conducted by an agent, and I suggest that we would be willing to defer it to accommodate

President James if he saw fit to postpone it. This is my only point.

DEAN JUDD: Well, I think the postponement would be based upon whether you really want to enter a motion in at this time for such postponement until that question can be resolved.

ATTORNEY SILVER: Oh, I'll make the motion.

DEAN JUDD: All right. Let the record show that Attorney Silver has motioned that the hearing be delayed until such time as the President could respond to the question of him being present at this hearing.

I'm not sure exactly how I want to rule on that motion, since we're somewhat informal, I'd like to take a minute and think about that.

ATTORNEY SILVER: Well, take your time.

DEAN JUDD: Well, the Hearing Officer is going to overrule that motion and not entertain it at this time. Let the record show that I have so done and let the record also show Attorney Silver's comment relative to not waiving his right of his point therein made.

DEAN JUDD: Mr. Counsel, will you the proceed with plaintiff's case.

ATTORNEY SILVER: I have a statement that I'd like to read in the record. This statement has been signed by six of the plaintiffs. Those who have not signed it, didn't sign it only because we were not able to reach them, and the statement is as follows: "We, the undersigned, being the plaintiffs in the case of Catherine Healey et al. against F. Don James et al., make the following statement: We affirm the statement of purposes recited in the application submitted to the Student Personnel Committee. However, in view of the decision of Emmet T. Clarie, U.S. District Judge, in this case, dated April 24, 1970, there appears to be ambiguity concerning the structure of the organization referred to as "Local Chapter of Students for a Democratic Society." In order to remove all doubt, we hereby

affirm that the proposed organization shall be called Students for a Democratic Society of Central Connecticut State College, and it shall have no connection whatsoever to the structure of an existing national organization or organizations bearing the name Students for a Democratic [9] Society. Furthermore, the organization shall be unaffiliated with any other organization. We affirm our constitutional rights of freedom of speech and freedom of association. It is our expectation that in the exercise of our constitutional freedoms, that we may be affected in communicating and establishing greater understanding with students of all political persuasion from the left to the right. We claim we are entitled to the presumption of honorable and legal motives and intentions. We claim further that any inference that the undersigned have an illegal purpose, is unwarranted, discriminatory, and unconstitutional." Now, this statement is signed by Paul Peter Brown, Joel Blumert, Theodore Tester, Catherine Healey, Edward John O'Neil, and Peter David Browne, and I'd like to offer this statement as an exhibit to be part of this case.

DEAN JUDD: Let the record show that Attorney Silver has presented applicant's exhibit. Will the clerk please mark this Applicant's Exhibit No. 1.

Now, as I understand, that particular application—that statement you just read rather—you indicate that the organization is apparently motioning at this time not to be considered as a local chapter.

ATTORNEY SILVER: Wait a minute. I think that the statement speaks for itself. The statement indicates that there was ambiguity. Judge Clarie indicated that there was ambiguity. So, what we're doing is attempting insofar as possible, by language, to clarify it. As it states, the organization shall be called Students for a Democratic Society of Central Connecticut State College, and I repeat shall have no connection whatsoever to the structure of an existing national organization or organizations bearing the same name. Furthermore, the organization shall be unaffiliated, and I emphasize, unaffiliated with any other organization. So this is a clarification of the original application.

DEAN JUDD: Attorney Silver, let me comment that I'm not sure that it's within my prerogative to, as the Hearing Officer in the case, to determine whether or not we can consider the case aside from what was introduced into Judge Clarie's memorandum of decision and as petitioner's exhibit in that decision of Judge Clarie, it was stated the statement of purpose of "a local chapter of Students for a Democratic Society" which was received on the 3rd of October by me as the Executive Secretary of the Student Affairs Committee. Now, on that basis, I think I would have to rule that I could only consider the case this morning on the basis of what was introduced into the Federal record and I'm not sure exactly how I can [10] proceed at this point if we're to proceed on the basis of an amended application, which this appears to be in my opinion.

ATTORNEY SILVER: Well, you're going to make the ruling, obviously?

DEAN JUDD: Yes.

ATTORNEY SILVER: But, I think it's clear that the judge won't be seeking some clarification.

DEAN JUDD: Correct.

ATTORNEY SILVER: And this is what we seek to do. You may interpret it any way you like, but I don't think there's any room for doubt as to the intention of this statement. Intention of this statement is very clearly to state to Dr. James that this organization will be unaffiliated with any other organization.

DEAN JUDD: Well, these certainly are some of the questions which the College would entertain when it presents its own questions this morning, if we go to that point.

ATTORNEY SILVER: Yes.

DEAN JUDD: This is one of the ambiguities that was raised in Judge Clarie's memorandum; and it was also one of the questions which President James raised when he announced his action on the application.

ATTORNEY SILVER: Well, I don't seek how language can express a thought any clearer than as it's stated here that they are unaffiliated with any other organization.

DEAN JUDD: Well, I think this is something we would want to entertain questions at a later time to see if that point was clarified and whether the representations can in fact be made on that basis, if a name of an existing organization is being used by the applicant club, I think would be the point we would want to clarify.

Well, let me ask you again. Are you introducing this particular exhibit as an amended application for recognition?

ATTORNEY SILVER: If you want to treat it as an amendment, you may treat it as such. I regard it as a clarification.

DEAN JUDD: Well, I just have to repeat again that the only thing we have to go on at the present time is what was introduced into the record; what the College has received from the applicant club. This was the basis upon which Judge Clarie made his decision and, of course, this is basis upon which we're having this hearing.

[11] Would you care to comment?

ATTORNEY SILVER: Yes, let me point out something that Paul Brown just brought to my attention. That in a student's application they refer to CCSC Chapter of SDS in their petition.

DEAN JUDD: In the petition of the Federal court?

ATTORNEY SILVER: No, no, in their application to the Student Personnel Committee. In their declared purposes of the organization set out in their petition to the Student Personnel Committee in which they requested official recognition. They identified themselves as the CCSC Chapter of SDS. Now, it is Dr. James in his comment—

DEAN JUDD: Counselor, would you please clarify from what you're reading there?

ATTORNEY SILVER: I'm reading from Judge Clarie's memorandum of decision on page 2, and the lower part of the page, paragraph 3.

DEAN JUDD: I have that; I see it.

ATTORNEY SILVER: —where, which indicates that the students referred to purposes of the CCSC Chapter of SDS. Now, on the next page, page 3, the Judge quotes Dr. James, "I am disapproving recognition of a local chapter of Students for Democratic Society." So, it's Dr. James who injected the word local chapter.

DEAN JUDD: Well, the chair objects to that reference and I would like to call Counsel's attention to the fact that on the stipulation of the facts agreed upon, by yourself and the Attorney—Assistant Attorney General, the application which was initially introduced into the original petition was incorrect and you will recall that introduced in at that time, was the following statement which was received by this office on the 3rd of October 1969. I will quote from it. "What follows is a brief statement of purpose of the group of students at CCSC who would like to form a local chapter of Students for Democratic Society (SDS)."

I would like to introduce this into the record as Hearing Officer's Exhibit L. Would you please so mark and then I would like Attorney Silver to look at that document which I think you're familiar with. I think the use of terms that President James used in his statement is exactly from this Exhibit L.

ATTORNEY SILVER: O.K. That's right.

DEAN JUDD: Well, then again I would have to request you, Attorney Silver, to respond to my original question. On your statement which you have introduced into the record as Applicant's Exhibit No. 1, are you considering [12] this at the present time as an amended application for recognition?

ATTORNEY SILVER: Dean Judd, I would hope that this hearing will not turn on technicalities. I would hope that we would get to the substance of what we are trying to do here. Now, the substance as I see is to determine whether this group of students are affiliated with any other organization or not. If you want to get into the technicalities of whether it's an amendment or something new, of course, this is your privilege, but I'd like you to know that on behalf of the students, we're not interested in technicalities, we're interested in attaining the recognition of an organization which bears this name and we make clear, I don't know how we can make it any clearer that it will be unaffiliated with any other organization. Now, I don't think that there's anything further that I have to say.

DEAN JUDD: Well, I think relative to your comment, Attorney Silver, I think the College needs both to be concerned with the technicalities and the substance of the request since either one of these or both of them may be involved in the recognition process. I think technically, not to whether this is an amendment or not, I think technically as to what the nature of the affiliation is, what the nature of the organization that is before the College for recognition is, is important at this point. The same point would be raised with any other organization who applied that would bear the name of an organization which would be supra to it.

ATTORNEY SILVER: Well, may I ask you to frame your question again and I'll answer it as specifically as I can.

DEAN JUDD: All right. Well, the question reframed again is, is the exhibit that you have introduced as Applicant's Exhibit No. 1 to be considered by this hearing as an amended application for recognition of the applicant group?

ATTORNEY SILVER: It may be an answer, it may be regarded as an amended name of the organization. The organization students on its original statements—statement of purposes. There is no change in the statement of

purposes. The name is changed and the attempt is to clarify the ambiguity that was found by Judge Clarie.

DEAN JUDD: Well, Attorney Silver, I think I would have to rule as the Hearing Officer if the name is so changed and this in fact would constitute a change of procedure from what was ordered by the Federal Judge which heard the case on the basis of what was presented in record to him, and I would then therefore rule that this constitutes a change in application.

[13] ATTORNEY SILVER: It seems to me that this is something that Dr. James will have to decide. You indicated that your acting as a Hearing Officer in his behalf so, I don't think your conclusion really is appropriate, is it, when you stop to think of it? Isn't Dr. James who's going to have to make that decision?

DEAN JUDD: Well, I think the decision has to be made on the basis of what we have introduced as fact and what is fact is what has been agreed upon by Counsel before the Judge and on the basis of what Judge Clarie handed down to his decision. I think this is the only thing I can go on in hearing this case, and I think I would have to say that at this point I want to request a clarification from our Counsel in this case before I should proceed further. Again, I will want to respect the right of the organization to be fully represented and to have their case fully stated, and I don't want to be arbitrary or capricious in ruling on this matter before I have a chance to discuss it with our own Counsel. Therefore, before proceeding, I'm going to adjourn the hearing until 10:00 tomorrow morning.

ATTORNEY SILVER: Just a minute. I don't know that I'll be available at 10:00 tomorrow morning. Now, you assigned this hearing today for 10:00 and I'm here, but I don't think—I may be available, but I doubt it—but I don't think its appropriate that you should just arbitrarily set a time for 10:00 o'clock tomorrow morning.

DEAN JUDD: Attorney Silver, your comment is well taken. Let me indicate that on appropriate notice to you,

and then I would assume you will inform your clients. Perhaps even it may be the case that I get this answer cleared before even adjourning at the present time. Now, would you be–

ATTORNEY SILVER: May I suggest this. We're here, we've allocated time for this hearing, you may have some legal questions which I can understand, but is there any reason why we can't continue any how? As far as I'm concerned we have nothing further to say. I've made my remarks, we submitted our statement, and personally, I don't think that there's anything to be said.

DEAN JUDD: I think that's well taken. Let the Hearing Officer rescind his previous motion to adjourn. I would like it noted for the record that I do not waive my previous right to have this question clarified and that this question when clarified may require that those who are here today return at a mutually convenient time to both parties. So, let the record so note.

If the applicants in the case have nothing further to say, then the College would like to raise some [14] questions of its own.

I think Counsel and applicants will have to understand that my questions are phrased and directed on the basis of what was before us at the time and while I recognize you may object to these, I will entertain that objections as they come.

ATTORNEY SILVER: Dean Judd, before you proceed, may I have one question clarified?

DEAN JUDD: If I can, yes, please go ahead.

ATTORNEY SILVER: For the record, have any of the plaintiffs in this case been ordered to be in attendance here today?

DEAN JUDD: They were not ordered. I think, would you please–

ATTORNEY SILVER: Well, I agree with you; I just wanted a record of it.

DEAN JUDD: The Exhibit B—Hearing Officer's Exhibit B—reads "Notice is served that a hearing is scheduled—If you intend to be present, written notice of such, etc. etc.

ATTORNEY SILVER: Yes, just so there's no misunderstanding, anyone who is here is here voluntarily. They were not directed to be here by your office or anybody else.

DEAN JUDD: That is agreed, and let it so state in the record. I would like also to indicate from Judge Clarie's decision, Hearing Officer's Exhibit A, page 14, where Judge Clarie states: "A hearing is hereby ordered to be held upon reasonable notice to the parties which shall be conducted by President James or Hearings Officer duly designated by him and acting in his stead. All the plaintiffs in this action shall be afforded an opportunity to be heard and shall be entitled to cross examine witnesses;"

ATTORNEY SILVER: I just want the record to be clear that they were not directed to be here. They're here voluntarily.

DEAN JUDD: Absolutely, yes, absolutely. I think that was—in your opinion—was that clear from my letter to all the applicants?

ATTORNEY SILVER: They had that impression, but I just wanted it to be clear.

DEAN JUDD: Well, I would like it not to be an impression. Counsel, would you please ask the applicants present if this was their understanding?

[15] FEMALE VOICE: Yes.

MALE VOICE: Yes.

DEAN JUDD: Mr. Brown is responding yes, and Miss Healey is responding yes. Let the record please so note.

Well, then I would like to proceed with the questions that the College has in this case. I would like to introduce as Hearing Officer's Exhibit G, the following document: "Investigations of Students for Democratic Society, part 6B. Hearings before the Committee on Internal Security, House

of Representatives, 91st Congress, first session, October 28-30, 1969. This is printed by the United States Government Printing Office and is labeled as Document 30-1330. Would you please mark that as Exhibit G, and I will–

ATTORNEY SILVER: May I suggest, Dean Judd, that before these exhibits are–become a part of the record that you let me look at them so that I will have an opportunity to raise an objection, if I have any objection. Is that all right with you?

DEAN JUDD: I'm going to–

ATTORNEY SILVER: I'm not suggesting that you will necessarily abide by my objections but,–

DEAN JUDD: I will rule initially that they will be entered into the record as Hearing Officer's exhibit. I will then, of course, afford you the opportunity to look through these and I might add Attorney Silver that if you feel you would like appropriate time to review these before I ask questions from them, I would certainly entertain that motion and give you that opportunity.

ATTORNEY SILVER: No, if I could just look at it for a moment.

DEAN JUDD: I was going to refer some questions from it.

ATTORNEY SILVER: I would like to make–apparently, you have made it a part of the record, but I would like to make an objection very clear that this exhibit that was offered and introduced by you is entirely irrelevant to this hearing. We have made very clear that this group of students are applying for an organization which is a local organization and has no connection whatsoever with any other organization. And for you to introduce in evidence anything pertaining to any other organization is totally irrelevant and I strongly disapprove of your doing so.

DEAN JUDD: Well, okay, I overrule that objection and let the objection be so noted in the record and I would

let the objection be so noted in the record and I would [16] like to comment again to rephrase my earlier comment that since the applicant organization is listed as a local chapter notwithstanding your petitioner's Exhibit 1 and until such time as I can have clarified my legal question on that matter, I am going to have–I would proceed–

ATTORNEY SILVER: But you do recognize that there is a statement offered by these students that they're not affiliated with any other organization–

DEAN JUDD: I recognize that that statement has been entered but I care not to rule on that statement until I can have it clarified by the State's Attorney General's office.

ATTORNEY SILVER: You see fit to ignore it for purposes of this hearing?

DEAN JUDD: Well, as I indicated previously, I see fit not to acknowledge it as a matter for discussion in this case since the only basis upon which the College can conduct the hearing is on what Judge Clarie ordered, this hearing is based upon an application, as previously noted and introduced as Exhibit L, Hearing Officer's Exhibit L, and this is what is before us. Now again, I think I would need to say, Mr. Silver, if this–if you feel that this is such a serious question before I proceed, perhaps this should be resolved so that we can go ahead with a clear frame of reference on it.

ATTORNEY SILVER: Well, I think you ought to resolve it because I think it's highly improper. I think it's tremendously improper when people make a statement that they're not connected with another organization and you proceed with evidence connected with another organization, I just don't follow the logic, I don't see the reason, I just don't understand it.

DEAN JUDD: The Hearing Officer might respond in kind to your statement.

ATTORNEY SILVER: How's that?

DEAN JUDD: Well, I don't see the logic in your presentation on the same basis because we have before us a document of the Federal court which clearly identifies the petitioner's exhibits that were agreed upon by Counsel. You agreed on those stipulations in the presence of our attorney.

ATTORNEY SILVER: Yes, but Judge Clarie–

DEAN JUDD: [17] And this is what the Judge ruled on?

ATTORNEY SILVER: Judge Clarie asked for a clarification; the Judge said there's ambiguity, and we're present here to clear up the ambiguities; now we cleared up the ambiguity; we are not a local chapter. We are not a local chapter of SDS, we're not connected with any national organization, we're unaffiliated and to go back to anything behind that's far as I am concerned is beating a dead horse.

DEAN JUDD: Well, your comments are so noted but I don't think I can rule on it, under the present document that we have before us. Now let me ask again. Do you want the Chair to entertain a motion to adjourn the hearing until this question can be resolved?

ATTORNEY SILVER: This is your hearing.

DEAN JUDD: That's correct.

ATTORNEY SILVER: You called this hearing. All I'm here to do is object to what I think is highly improper, and this is what I do.

DEAN JUDD: Well, in that case, Attorney Silver, I have noted your objections. I have acted on them and I'm going to proceed according to the plan that I introduced.

I did introduce into the record Hearing Officer's Exhibit B and identified it and I would like to pose this question: Attorney Silver, on pages 2170 and 2171 you will see membership cards which are detailed on those two pages. One of these indicates blanks for chapter records and one indicates a blank for national records. Now, I would like

to ask in regard to that, would you care to comment on the nature of those membership cards and what bearing they would have on the local chapter's application?

ATTORNEY SILVER: I think they have absolutely no bearing. None whatsoever. A person can belong to any organization he wants to in the United States. I don't know of any organization to which it's illegal to belong. But the fact remains, one can belong to an organization entitled "Students for Democratic Society of Central Connecticut State College" and I think that membership in any other organization is irrelevant. The only thing that we're concerned about here as I see it is the purpose of this organization and its purposes are stated—they're set forth. Now, what any [18] individual member may believe, as a matter of fact, and maybe I'm anticipating—

DEAN JUDD: I don't think we're questioning beliefs—

ATTORNEY SILVER: Maybe we're anticipating whatever they believe, or whatever organization they may belong to is entirely irrelevant. As far as I'm concerned, I wouldn't care if Barbara Healey was a member of the Communist Party. It would have nothing to do with the subject matter of this hearing.

DEAN JUDD: I think the College's point in raising this question, Attorney Silver, is that there is definitely the existence of a national organization which is detailed in that document as well as in others. It does indicate that there are local and national membership cards and the College feels that if the organization is going to be known by a name which is used by another organization which has been duly constituted th- we have a right to know the affiliation that is intended here.

ATTORNEY SILVER: Affiliation of whom?

DEAN JUDD: Well, the application presented by the students indicated they would be a local chapter of Students for Democratic Society at Central Connecticut State College and again, recognizing your previous objection to

that, we would still have to proceed on the basis of the original application.

I would also like to continue to use Exhibit G at the present time, and I would like to know if the applicants are familiar with the national constitution of Students for a Democratic Society?

ATTORNEY SILVER: Well, I think the question is improper. I think its immaterial; I think its got nothing to do with this case; It has no bearing whatsoever. We're not interested in the national organization of SDS. We're not interested in any organization. The only organization we're here to talk about is the organization stated here–Students for Democratic Society of Central Connecticut State College. The constitution of any other organization is entirely irrelevant.

DEAN JUDD: Well, the Chair notes that comment but overrules it and I would direct–Counsel that you be referred to page 2107 of Hearing Officer's Exhibit G which denotes the constitution of the national organization and which shows various amendments to that document as approved by a national convention. [19] I would like you to refer if you hold onto this to Article 3 of that document which has a statement regarding chapters and affiliates. Would you care to respond to Article 3 of that document?

ATTORNEY SILVER: No, I'm not going to respond to it because I think it is irrelevant to the purposes of this hearing. It's got nothing to do with it.

DEAN JUDD: Would you care–

ATTORNEY SILVER: You might just as well present us with the constitution of the Klu Klux Klan, as far as I'm concerned, it has as much relevance.

DEAN JUDD: All right, would you just hold on to that until we are finished with it. I would like to ask the next question. How would such a constitution affect the applying organization?

ATTORNEY SILVER: I'm not going to answer that because I think there's nothing that any other organization can do or will do that has any relevance to this case. We stated very clearly that we're not connected to any other organization so it has no bearing whatsoever.

DEAN JUDD: All right, let the record so show Attorney Silver's comment to that question.

O.K., may we have that back please? Thank you. Hearing Officer would like to introduce into the record as Hearing Officer's Exhibit H–Investigations of Students for a Democratic Society, Part 1A–Hearings before Committee of Internal Security, House of Representatives, 91st Session of Congress, June 3-4, 1969. This is a GOP publication listed as 30-133.

I would like Counsel to look at page 5 of this document which indicates a claim to certain number of members and certain number of local chapters with national offices being located at 1608 W. Madison Street, Chicago, Illinois. There is also reference drawn there to "New Left Notes" as being the official publication of Students for a Democratic Society. I would like to ask Counsel if he is familiar with the publication as well as with the existance of the national office?

ATTORNEY SILVER: I am not familiar and I'm not interested in responding because your question is completely irrelevant to the purpose of this hearing. I am not interested in anything that a national organization stands for.

[20] DEAN JUDD: O.K., Attorney Silver's comment on the irrelevance of that data is noted but overruled.

This is Hearing Officer's Exhibit H. Hearing Officer introduces as Hearing Officer's exhibit H, investigations of Students for a Democratic Society, Part 1-B, Hearings before the Committee on Internal Security, House of Representatives, 91st Congress, 1st edition, June 5 & 17, 1969, GPO publication listed as 30-133.

Counsel, on page 434, while I respect exactly what you are going to say again, I do want to introduce these for the record. There is a ad appearing in that document from Students for a Democratic Society to subscribe to New Left Notes. Such notice reports the price for subscription to New Left Notes, which is elsewhere described and has been noted in this hearing as the national publication of said Students for Democratic Society, as well as a $4 price tag for the dues. How do the applicants in this case see a national publication related to local chapter activities?

ATTORNEY SILVER: Well, I object again. It's totally irrelevant.

DEAN JUDD: All right, objection is noted for the record but overruled.

ATTORNEY SILVER: For the same reasons that I've stated over and over again?

DEAN JUDD: Please let the record also show that Attorney Silver's objections are as previously noted for the other documents introduced on the investigation for Students for a Democratic Society.

I suppose a—well, at this time Attorney Silver, on the basis of your objection, which although have been overruled and introduced, I think it is rather futile for me to continue in this line of questioning and I, therefore, am going to adjourn the hearing at this time subject to resolving the earlier question which we raised to be clarified so that we can conduct the hearing and get to the, as you indicated, the substantial facts of the document which you introduced as Applicant's Exhibit No. 1.

So, let the record show that the Hearing Officer is adjourning the hearing at 10:55 a.m., subject to recall upon due notice and upon the mutual convenience of the parties involved.

I would like to personally thank you for being here Attorney Silver, thank Miss Healey, and Mr. Brown. I think they certainly acted commendably in the case, and I

would like that to be noted for the record as well, since the Judge indicated that we should be here in all civility and I would like to thank them [21] responding in kind to that request. The hearing is now adjourned.

[22] DEAN JUDD: This hearing is now officially reconvened and called to order on this date of 25 May 1970, at 10:00 a.m., in Room 207 of the College Administration Building by Hearing Officer Richard L. Judd. This session is a continuation of the hearing which convened on the 19th of May 1970, at 10:01 a.m. as adjourned by the Hearing Officer at 10:55 a.m. subject to a date and time which we agreed upon by Counsel for the applicants, Attorney Abraham Silver and the Hearing Officer.

Let it be noted in the record the same rules and procedures are in effect regarding the persons who may be present.

The Hearing Officer introduces for the record those present on his staff for this hearing: Mr. David Hayes, Director of Security, serving as the Hearing Officer's bailiff, Mrs. Anne Balciunas, our clerk for the hearing, and Mr. Thomas Gurnsey, our recording technician.

Mr. Gurnsey, would you please play back the last several feet of the tape to assure that the recording is being made? Okay, let the record show that such test was made and was heard. Thank you.

For the record, Attorney Silver, would you indicate your presence?

ATTORNEY SILVER: Yeah, I'm here—Abraham Silver.

DEAN JUDD: Let the record show Mr. Silver's comment. For the record, Counselor, would you indicate your clients present this morning?

ATTORNEY SILVER: My clients—none of my clients are present.

DEAN JUDD: All right. Would you clarify the presence of Dr. Brown, please?

DR. BROWN: Well, perhaps I should do that..

DEAN JUDD: Well, let me ask your counselor.

DR. BROWN: He's not my counselor.

DEAN JUDD: Well, let me indicate Dr. Brown you were listed on the request from Mr. Brown as one of the witnesses in this case, is that true?

DR. BROWN: Yes.

DEAN JUDD: All right. You are Dr. Haines Brown?

DR. BROWN: Right.

DEAN JUDD: And you are a member of the faculty at Central Connecticut [23] State College. Counselor, do you have any comments relative to his presence?

ATTORNEY SILVER: Oh, I'm glad to have him here.

DEAN JUDD: And he's here with your approval?

ATTORNEY SILVER: Certainly.

DEAN JUDD: Very fine.

ATTORNEY SILVER: As far as I'm concerned, anybody can be present.

DEAN JUDD: All right. Let the record show that on the date of 20 May 1970, be telecon, Attorney Silver it was agreed that the hearing would be resumed on this date and time and that Attorney Silver waived notice of such hearing. The Hearing Officer exercised his prerogative, however, to communicate this information by letter to the applicants and counsel. The following were informed on 20 May 1970, by special delivery certified receipt requested mail: Catherine J. Healey, James Vincent Carey, Edward John O'Neil and Paul Peter Brown, Theodore Robert Tester, Joseph A. Knowles, Lawrence Stub, and Peter Browne.

The Hearing Officer enters into the record as Hearing Officer's Exhibit K and M, copies of said letters. Is there objection to these being entered?

ATTORNEY SILVER: No.

DEAN JUDD: None appearing they are so entered; would the Clerk please so mark those as Exhibits K and M.

The Hearing Officer reaffirms his previous statements and rulings, specifically those regarding Applicant's Exhibit No. 1 to the effect that this hearing is and will proceed on the basis of what was introduced in the Federal record and eventually ruled upon by U.S. District Judge T. Emmet Clarie. Such memorandum of decision has been duly entered into this record as Hearing Officer's Exhibit A.

Those who just entered the room, may we please have your identification?

PERSON: Philip Sena.

DEAN JUDD: Philip Sena. Mr. Sena you are here at the request of—Mr. Sena is here at the request of Miss Healey, and you are here in the capacity of—

MR. SENA: As a witness.

DEAN JUDD: As a witness. All right, counselor?

[24] ATTORNEY SILVER: I'm happy to see anyone who wants to come here.

DEAN JUDD: And Miss Healey, would you please acknowledge your presence?

PERSON: Catherine Healey.

DEAN JUDD: Catherine J. Healey is acknowledged as present.

Okay, let the record show also that on Thursday, 21 May 1970, in a telecon between the Hearing Officer and Attorney Silver, and upon counsel's request, it was agreed that President James would be called in this hearing as a witness in behalf of the counsel's clients. The Hearing Officer would would like it noted, however, in the record that he considers the presence of Dr. James to be a highly unusual request of counsel. I say unusual because to have someone act as a witness at a hearing who will later be required to function in a quasi-judicial capacity, so to speak in the same manner. The Hearing Officer notes for the

record that such request was allowed because of the request of counsel for the clients.

And Dr. James, would you acknowledge your presence for the record?

DR. JAMES: Yes, Don James.

DEAN JUDD: And your capacity?

DR. JAMES: President, Central Connecticut State College.

DEAN JUDD: Very fine. Let the record please show that information. I also wish to make clear before proceeding that all questions directed to Dr. James will be addressed to the Hearing Officer first in order that their propriety may be ruled upon before being answered by the witness. Furthermore, Hearing Officer notes for the record that he has requested Dr. James to be here; the request of Dr. James has interrupted a previously scheduled budget meeting which is now in progress and is being held open until he returns. I would also like to make clear that Hearing Officer's interrupting his previous line of questioning which commenced on the 19th of May, in order that Dr. James could be questioned and then excused inasmuch as his schedule is extremely heavy today. However, when Dr. James is excused, Hearing Officer will resume his previous line of questioning. Counselor, would you please proceed?

ATTORNEY SILVER: Now, I just want to make an observation that I don't think it's highly irregular to have Dr. James here. I think this is an unusual proceeding. I think it's a rare occasion when the president of a college is a defendant in a law suit and, the decision indicates [25] that there was a question of due process involved here and the Court found that there was a departure from due process. I don't think it is an unusual situation and I don't think it—it should be considered such that students who have felt sufficiently aggrieved to retain counsel and to go to court, under those circumstances I don't think it's so

highly unusual that the President should give a few minutes of his time, under the circumstances, when students would like to communicate with him, through their attorney and I appreciate the fact that Dr. James has a heavy schedule and I assure you that I'm not going to take anymore time than absolutely necessary. I really have only a few questions, but I'm not apologizing for doing so.

DEAN JUDD: You're not objecting to my statement, however, are you?

ATTORNEY SILVER: Well, I just don't think it was appropriate. That's my point. I'm not making any formal objection. I just don't think that your remark was appropriate under the circumstances.

DEAN JUDD: Let it be so noted.

ATTORNEY SILVER: Now, Dr. James, when you made your decision to disapprove of this proposed organization, my question to you is, whether you at that time disapproved of the written statement of purposes that were submitted for your approval?

DEAN JUDD: Counselor, would you repeat your question once more for the chair?

ATTORNEY SILVER: Well.

DEAN JUDD: Let me rephrase it.

ATTORNEY SILVER: Well, then let the record—let the recorder read that—phrase that.

DEAN JUDD: All right. Would you please play back this question? I'm going to rule that question—is that picking up—I'm going to rule that question improper. I don't believe the question is intended to clarify the ambiguity which was requested by the Federal Judge.

ATTORNEY SILVER: Well, Mr. Judd, I understood this to be an informal proceeding and I think as a preliminary question, it's appropriate and I just don't understand why you should disapprove of it. It's preliminary to what I'm leading to and I certainly don't see any harm to it.

DEAN JUDD: I wonder, counselor, it does go into something which is already a matter of record. It goes into what the [26] Court has ruled upon. Judge Clarie indicated in his decision that this hearing should be held in order to clarify ambiguity in the application, not as to why Dr. James ruled as he did.

ATTORNEY SILVER: I'm interested in determining Dr. James' thinking at that time, at this time, and I'd like to know what—and certainly I think his thinking has some application, has some relevance as to the—whether his decision is a proper one or not.

DEAN JUDD: Well, that is up to the Court to determine and I rule that the question is improper and will not allow it, Attorney Silver. Do you wish to object to that?

ATTORNEY SILVER: Oh, I certainly do.

DEAN JUDD: Objection is noted but is overruled; it will appear in the record.

ATTORNEY SILVER: All right.

DEAN JUDD: Would you please proceed?

ATTORNEY SILVER: Dr. James, you—I withdraw that. Have you already decided this case?

DEAN JUDD: Attorney Silver, I rule that question is improper and is going into a statement of after the fact which has not yet been determined.

ATTORNEY SILVER: Dr. James as I understand it, you are charged with the responsibility of at this time—not at this minute, but following this hearing—to make a decision whether you approve or disapprove of the organization which is the subject of this hearing. I'm asking you if you have already decided—

DEAN JUDD: I object.

ATTORNEY SILVER: Can I finish the question?

DEAN JUDD: You have already rephrased that question. I've already ruled once on it. You're asking him to give

you an opinion before he reviews the record. The question is improper and I please request counsel not to continue in that line of questioning.

ATTORNEY SILVER: Well, I don't think you're helping your cause by cutting me off this way.

DEAN JUDD: Would you want to repeat it again?

ATTORNEY SILVER: Let the record—if you would please.

DEAN JUDD: All right. Let the record—Attorney Silver, do still want that question answered?

ATTORNEY SILVER: I certainly do, now.

[27] DEAN JUDD: The Hearing Officer rules it's an improper line of questioning and I rule it out of order. Let me indicate, Attorney Silver, that I think you're familiar with the memorandum of decision. The reason that this hearing has been called, as you indicated, is to provide due process and upon the record of this hearing, Dr. James would give his decision. We are gathering information so that the ambiguities which were patent in the application could be cleared, but to go into the reasons that Dr. James acted, is an improper line of questioning.

ATTORNEY SILVER: Well, I think it's the proper question for me to inquire as his state of mind at this time, and I'm going to ask him another question, and more questions and if you insist on overruling and keeping them out, this is your prerogative, but I assure you that there isn't—well, I assure you of nothing at this point.

DEAN JUDD: Please continue.

ATTORNEY SILVER: Dr. James, you addressed the the Lions Club last week, did you not? I can't ask him a question directly? I've got to talk to you?

DEAN JUDD: Dr. James you may answer that question.

DR. JAMES: Yes, I did.

ATTORNEY SILVER: Now, in your remarks to the Lions Club, it was reported that you stated that SDS is rejected on this campus. Did that—as of the date of those remarks, did you consider SDS rejected on the campus?

DEAN JUDD: Dr. James, I will instruct you not to answer that question; I rule it out of order. That is not relevant to this hearing.

ATTORNEY SILVER: Now, the reason I asked that question is that I'm trying to determine whether or not Dr. James has already decided it. Now, the purpose of this hearing, in order to satisfy due process, is to provide Dr. James with all the information that he may need in order to form a judgment. Now, it seems to me that it's appropriate for me to determine whether the person who's going to make the decision has already made up his mind or not on the question.

DEAN JUDD: Counselor, I'm ruling that it is irrelevant and immaterial for the purpose of the hearing, and I will not allow the question. Are you objecting?

ATTORNEY SILVER: Oh, I object very vigorously.

DEAN JUDD: The objection is noted but overruled.

[28] ATTORNEY SILVER: And I object to it especially since this is a quasi-judicial hearing where great latitude is permitted in the questioning and I think it's—I think it's grossly inappropriate for you to cut me off in this manner.

DEAN JUDD: I'm not cutting you off, Attorney Silver. Your questions have been read in the record. I've acted upon them in my opinion as Hearing Officer. This will be for the Court to review when it deems it proper.

ATTORNEY SILVER: Well, Dr. James, have you seen the statement that the students signed and submitted in this case at our last hearing?

DEAN JUDD: Attorney Silver, those are still within the Hearing Officer's records; they have not been reviewed by anyone.

ATTORNEY SILVER: Well, can he answer my question?

DEAN JUDD: No, because I'm giving you the answer.

ATTORNEY SILVER: You're not gonna let him answer that question?

DEAN JUDD: No, I won't. I've told you I've already given you my opinion. I have the record, it has not been shared with anyone.

ATTORNEY SILVER: May I have that beginning, please?

DEAN JUDD: Yes, you may.

ATTORNEY SILVER: This is really terrific.

DEAN JUDD: I'm handing to Attorney Silver Applicant's Exhibit No. 1.

ATTORNEY SILVER: Dr. James, I'm asking you to look at this—it's a page and a third—would you please read it. I'd like to ask you a question in connection with it.

DEAN JUDD: You have permission to read the document.

DR. JAMES: I've read the document, Mr. Judd.

DEAN JUDD: All right, would you proceed counsel?

ATTORNEY SILVER: Yes. This statement, Dr. James, states I quote, "in order to remove all doubt we hereby affirm that the proposed organization shall be called Students for a Democratic Society of Central Connecticut State College, and it shall have no connection whatsoever to the structure of an existing national organization or organizations bearing the name Students for a Democratic Society. Furthermore, the organization shall be unaffiliated with any other organization."

Now, you're seeing this for the first time I assume?

[29] DR. JAMES: This particular document?

ATTORNEY SILVER: Yes.

DR. JAMES: Yes.

ATTORNEY SILVER: Now, does that statement help you in making a judgment? The statement specifically that

the organization will be unaffiliated with any other organization.

DEAN JUDD: Counselor, I'll re-rule as I did earlier that that Applicant's Exhibit No. 1 is not germane to this hearing; it was not part of the Federal record; I overruled it before, entered it into the record, and I am now motioning and deny him to answer that question. It is not germane to this hearing.

ATTORNEY SILVER: Well, let me just make the comment that I think it's most germane. The judge indicated that there was some ambiguity with respect to the identification of this organization with some other organization. He indicated that apparently there was some confusion and certainly some reasonable basis for your reaching the conclusion that you did, so far as identification of this group with another organization. But the judge said it was ambiguous. He didn't take the strong position that in fact—that it was associated.

Now, my question to you Dr. James is: In view of the clarification, and I treat this statement as purely a clarification of the intentions; this is offered for the purpose of clarifying the ambiguity that was recognized by the judge. My question again is, does it help you in determining whether or not in fact the proposed organization is affiliated with any other organization?

DEAN JUDD: Counselor, you will recall from our hearing of last Tuesday that I raised this question to you, at the time; were you considering this as an amended application? You so motioned; I denied that motion subject to a clarification from our counsel. I am now giving you that clarification from our counsel. This is considered as an amended application. I'm ruling it out of order. I'm ruling it as not germane; it was not introduced in the Federal record. Dr. James' decision on this case will be based on what has been introduced into this hearing on the original application of the CCSC students for a local chapter of SDS, which was introduced as Hearing Officer's Exhibit L.

It was introduced in the Federal record, you agreed to it; it was stipulated. Therefore, I repeat again that this will not be considered as part of this hearing.

[30] ATTORNEY SILVER: And I repeat again that the purpose of this hearing as I understood it was to clarify an ambiguity. I thought this was one of the issues to clarify an ambiguity, and I insist that if you cut me off and do not permit me to clarify that ambiguity by showing the intentions of these students that you are not practicing due process at this hearing.

DEAN JUDD: That is your opinion, and you're welcome to it. My ruling still is the same. Do you have further questions of Dr. James?

ATTORNEY SILVER: Dr. James, do you intend to any evidence in which the creditability of any of these students is under attack?

DEAN JUDD: Are you asking it as a witness for your clients in this case, counselor? I think it's an improper line of questioning.

ATTORNEY SILVER: All right, now look. The person who is going to make the determination here is Dr. James. You are simply his agent. I thought from the beginning it was highly improper.

DEAN JUDD: You noted that and I ruled—

ATTORNEY SILVER: Yes, and I say it again; but assuming that Dr. James is very busy, I hadn't intended to take more than five minutes of his time. I spent more time arguing over your objections than over the questions that I intended to ask him. The fact is he's here and he's the one that's going to have to make the decision. Now—

DEAN JUDD: The fact is that he's here as your witness. I consider that an improper line of questioning for a client's witness.

ATTORNEY SILVER: Well, he's my witness and he's also the person who's going to make the decision in a

quasi-judicial proceeding—an administrative proceeding, which I understand is an informal type of proceeding. So, I ask the question again. Is he going to—let me change that question. Is he questioning the creditability of these witnesses?

DEAN JUDD: I don't think that's a proper line of questioning—answers to give you, Attorney Silver. He is not here to question the defendants in this case. The Hearing Officer is.

ATTORNEY SILVER: Well, he is the person who is going to make the decision. Now, you have here some documents, you've got a written statement, and I'd like to know whether he has any reason to question the creditability of the people who have made the statement?

[31] DEAN JUDD: Which statement, Attorney Silver?

ATTORNEY SILVER: The statement—

DEAN JUDD: I've ruled that not admissible as germane to this hearing. It's introduced into the record and the Court will have access to it and I've ruled it is not permitted. Do you have any further questions you wish to raise to Dr. James?

ATTORNEY SILVER: Well, you're wearing me down, I'll tell you that. Well, I think I'm wasting my time, but I'm going to get something into the record anyhow. I'm very disappointed—I'm extremely disappointed. I have given a great deal of my time; I'm representing your students here. I've done this and I think that I've achieved something. I've done it without any compensation and I just don't think that I have received the consideration that reasonably should be received. Now, if there are any questions that I asked which are objectionable, and in fact they went into the record, what harm would they do? Dr. James is certainly a mature person. He would be competent to ignore the questions. I just don't understand why you're so technical.

DEAN JUDD: We're in a meeting, counselor, in which the technicalities and the substance involved, may be

involved in the determination. I wish to make it abundantly clear that as the Hearing Officer I'm going to conduct this in an efficient manner so that there will be no question in the eyes of the Court, or anyone else, that this was a hearing which afforded due process which afforded you to answer the questions—to raise a question rather, upon what the Federal judge ordered. And the Federal judge made it very clear what the purpose of this hearing was to be. Now, if the Court cares to take me to task for the rulings I've made, they're at liberty to do so; but these will be in the record. I'm only acting in as honest a capacity as I can as a Hearing Officer, and while I respect your disappointment, Attorney Silver, you are certainly aware of how these proceedings go on in a court of law—they're on facts, they're not on opinions, they're not as hearsay, they're not asked to make people give answers to questions which are going to be after the fact, before the time comes when he sees the record, and I think you would understand that.

ATTORNEY SILVER: Well, I do understand it and I think I understand it better than you understand it. I think you're missing the whole point of this thing. Now, as I understand it, and let me clarify what I understand, and let's see if you really understand what's going on here. A decision was made by President James, and the Judge decided—reversed that decision because he—well, why don't you let me finish?

[32] DEAN JUDD: I am, go ahead.

ATTORNEY SILVER: Okay, not on its merits, but on the basis of the procedure—that there was not a hearing. Now, under the circumstances, there's been neither approval or disapproval of the application. We're starting from scratch so to speak so far as President James is concerned. The Personnel Committee has already approved, and the Judge simply indicated that Dr. James made his desicion without communicating with the students. So, that his decision is a nullity at this point. Obviously, he has the

power to make the decision and he will do so, but in order for him to make the decision, I would think that the Court contemplated that the students provide Dr. James with evidence with Dr. James did not get when he made the decision before and it's my purpose, I thought, to provide such evidence to assist Dr. James in reaching his decision. So, that it isn't a question of what went on in Court. The facts that Dr. James has got to determine were not determined in Court, and they were never determined before. This is the time to bring it out and you are cutting me off, and I object to it.

DEAN JUDD: Your objection is noted, it's overruled.

ATTORNEY SILVER: Okay.

DEAN JUDD: The determination was made on what was in the record. I'm not going to paraphrase Judge Clarie's decision, but he did not overrule President Jame's decision you are well aware of that. He retained jurisdiction on that decision until such time as a hearing could be held to clarify the ambiguities and that's exactly what we're attempting to do here. Now, do you have any further questions of Dr. James?

ATTORNEY SILVER: Yes, could we go off the record? I'd like to talk to Dr. James.

DEAN JUDD: No, sir.

ATTORNEY SILVER: Will the record show that I wanted to talk to Dr. James "off the record", and I was told that I couldn't do so?

DEAN JUDD: That request is denied. Dr. James is here as your witness, counselor. We are conducting a hearing; we're not going out of session.

[33] ATTORNEY SILVER: I'm outraged!

DEAN JUDD: Your outrage is noted. Now, do you have further questions of Dr. James?

ATTORNEY SILVER: There's no point in my saying anything further.

DEAN JUDD: Would you please respond to the question—do you have further questions of Dr. James?

ATTORNEY SILVER: Oh, I have many questions, but what is the point of it?

DEAN JUDD: Are you indicating you have no further questions, counselor?

ATTORNEY SILVER: In view of the tact that this meeting is taken, I'm not going to ask anymore questions—

DEAN JUDD: You have no further questions?

ATTORNEY SILVER: Because I feel that it's fruitless to ask any questions.

DEAN JUDD: Would you simply respond "yes" or "no" —do you have further questions of Dr. James?

ATTORNEY SILVER: I answered my question in the only way that I'm going to answer it.

DEAN JUDD: The Hearing Officer is directing you to answer that question, counselor.

ATTORNEY SILVER: Well, how do you expect to enforce that?

DEAN JUDD: Are you going to respond to that.

ATTORNEY SILVER: Well, I told you I'm not, under the circumstances, I'm not going to.

DEAN JUDD: All right, fine. Let the record show that answer. Dr. James, you're excused. Now, therefore, the Hearing Officer's going to continue with his previous line of questioning of last Tuesday.

The Hearing Officer is going to introduce into the record as Hearing Officer's Exhibit N, Investigations of Students for a Democratic Society, Part 3-A, Hearings before the Committee on Internal Security, House of Representatives, 91st Congress, 1st Session, dated July 22, 1969, U.S. GPO Publication 30-133.

Counselor, is there objection to this being entered?

ATTORNEY SILVER: Excuse me.

DEAN JUDD: Would you like to recess, counselor?

[34] ATTORNEY SILVER: I think it might be a good idea; maybe I'll cool down.

DEAN JUDD: The chair is adjourning the session for five minutes.

I'll repeat my earlier statement so counsel may be aware of what I'm asking him to respond to. The Hearing Officer has introduced into the record as Hearing Officer's Exhibit N—the following publication: "Investigations of Students for a Democratic Society, Part 3-A, Hearings before the Committee on Internal Security, House of Representatives, 91st Congress, 1st Session, dated 22 July 1969, U.S. GPO Publication 30-133."

Counselor, do you object to—

ATTORNEY SILVER: Yes, I object to it for—don't you want my reason—don't you want to hear my reason for the record?

DEAN JUDD: Yes, go ahead.

ATTORNEY SILVER: Sure, my objection is that there has been no proof that the proposed organization is in any way identified with any other organization, and any evidence of the characteristics of any other organization is irrelevant, such evidence is irrelevant to the question—the issue before this hearing.

DEAN JUDD: Objection noted, but overruled. I refer counsel to Hearing Officer's Exhibit L previously noted several times which earlier identified the nature of the applying organization.

Would the clerk please mark this as Hearing Officer's Exhibit N.

PERSON: (Dr. Haines Brown) Is it possible to ask a question about your last statement?

DEAN JUDD: I will give this to your counselor.

PERSON: (Dr. Haines Brown) He's not my counselor.

ATTORNEY SILVER: I'm not his counselor. As far as I'm concerned, anyone who wants to speak with your permission—

DEAN JUDD: He is a witness for you, counselor, now if you want to put him on the stand—you put him on the stand.

ATTORNEY SILVER: Oh, well, he can—as far as I'm concerned he's free to say anything he likes because I'm sure that he's a competent, qualified person.

DEAN JUDD: We're not questioning his competency, counselor. Are you putting him on as a witness.

[35] ATTORNEY SILVER: If he has something to say, I'd like to hear it for the record.

DEAN JUDD: Dr. Brown, please proceed.

I, first of all, think that there's a distinction between as appearing as a witness, and having someone as one's counselor, I believe.

DEAD JUDD: Dr. Brown, let me repeat that I advised Attorney Silver and the clients in this case of who would be present and who would not be, to alert my office with due notice, they did so, your name was listed—you were not here at the last hearing; since you are not a defendant in the civil action here, I asked at the time why you were here. Now, you weren't there so you couldn't answer that, but you're either here as a witness, or as an applicant or defendant in the case. Now, if you have some questions—

DR. BROWN: Yes, I do.

DEAN JUDD: —Attorney Silver wants to raise of you, that's fine.

ATTORNEY SILVER: Well, I'd rather not offer this witness in any formal way. This is an informal proceeding, and if he has something to say, I'd like to hear it.

DEAN JUDD: Well, counselor, if he's not a witness, then I can't allow it.

ATTORNEY SILVER: Well, then, he is a witness.

DR. BROWN: Thank you.

DEAN JUDD: Now, would you please answer—would you want to ask him your questions, counselor?

ATTORNEY SILVER: My question is, what would you like to say Dr. —why don't you—

DEAN JUDD: Counselor, that's a very frivolous statement that you're making now. Do you have questions of the witness that are intended to clarify the ambiguities raised here?

ATTORNEY SILVER: Well, may I suggest that he give his testimony, and if there's any of his testimony that you think is offensive, then rule it out.

DEAN JUDD: Agreed, continue, Dr. Brown.

DR. BROWN: Thank you. The—a minute or two ago, you stated Exhibition "L" which I can only gather by implication what it is, nevertheless identifies the character of the petitioning organization, is that correct? Is that the—

DEAN JUDD: I'm not here to answer your questions as a witness.

[36] DR. BROWN: The Exhibition "L" does not look to me, the petitioning organization are of the 6 students—represented by the six students here—petition "L" does not look to me like their petition for recognition.

DEAN JUDD: Counselor, would you please explain to your witness what was introduced into Court which you agreed to. Would you care to present him with this Exhibit L?

DR. BROWN: I'm sorry, this Exhibit wasn't "L" here? Okay, fine. Thank you for clarifying you had that in your hand there. I.d only like to state from my own past experience, two or three years ago I was a student at Michigan State University. There, there was an organization known as "Students for a Democratic Society." It was a rather loosely structured organization, it had members in it who

paid dues to the Michigan State University Students for a Democratic Society. Other people who joined with them were considered to be members, did not pay dues. There was no list—formal list—of members. This organization calling itself "Students for a Democratic Society" had absolutely no connection whatsoever with any other outside organization. They were the recipients of literature from a variety of groups. They had personal contacts with people from a variety of organizations, but there was no connection in terms of their policies, their aims, with any outside organizations whatsoever.

DEAN JUDD: What is your question, counselor?

ATTORNEY SILVER: I would like that the record show the qualifications of Dr. Brown, and I ask Dr. Brown what—do you have, a Ph.D. Degree?

DR. BROWN: That's correct.

ATTORNEY SILVER: And where did you obtain that degree?

DR. BROWN: At Michigan State University.

ATTORNEY SILVER: And what was your subject?

DR. BROWN: History.

ATTORNEY SILVER: History, and what is your connection with Central Connecticut State College?

DR. BROWN: I'm here as a professor of history—assistant professor of history.

ATTORNEY SILVER: What field of history do you teach?

DR. BROWN: My—primarily, Medieval History.

[37] ATTORNEY SILVER: And you teach students at this College?

DR. BROWN: That's correct.

ATTORNEY SILVER: Have you had any relationship with the students who are involved in this hearing?

DR. BROWN: Other than one of friendship; they appealed to me for my counsel and help in this matter and beyond that none.

ATTORNEY SILVER: Have–

DEAN JUDD: Clarification, counselor for the record, I believe Dr. Brown is the proposed faculty advisor for the organization which is before the College. Is that correct?

DR. BROWN: That's correct.

ATTORNEY SILVER: Thank you very much.

DEAN JUDD: Do you have any further questions of Dr. Brown?

ATTORNEY SILVER: No, I don't.

DEAN JUDD: Dr. Brown, would you please pass back Exhibit "L" for the record?

DR. BROWN: Yes.

DEAN JUDD: Thank you. Would the clerk please hand me Exhibit N. Counselor, would you please turn to the page that has been marked? I'd like you to turn to page 713.

ATTORNEY SILVER: What page?

DEAN JUDD: Page 713. You will see a note there signed by a Michael Spiegel, who is identified as a national interim committee member. Where Mr. Spiegel is quoted as saying "both the policy of SDS as a national organization–"

ATTORNEY SILVER: Wait a minute, excuse me, before you say what he quotes, are you offering this in evidence?

DEAN JUDD: I already have.

ATTORNEY SILVER: Oh, you have.

DEAN JUDD: You objected to it and that's been overruled.

ATTORNEY SILVER: Oh, I have another reason for objecting to it. It's all hearsay. It's all hearsay. Mr. Spiegel isn't here to testify. It's hearsay.

DEAN JUDD: Let me comment. This isn't hearsay. It's been introduced before the committee and I'm overruling your objection.

[38] ATTORNEY SILVER: It's hearsay as far as this hearing is concerned.

DEAN JUDD: Would you let me rephrase the question, then you can determine whether you want to answer it or not. Anyway, Mr. Spiegel indicates there that "no chapter may be recognized as affiliated unless it meets certain requirements." My question to you, counselor, if you are to be a local chapter as your application indicated it would be, doesn't the above statement show that there is a national organization and that a national organization known as Students for a Democratic Society does have certain restricting authority?

ATTORNEY SILVER: I'm not going to draw any inferences from any of your exhibits. I regard everyone of these exhibits as irrelevant and I've indicated that over and over again, and I think that Exhibit 1 is clear enough that we are not identified with any other organization. I think you're beating a dead horse here.

DEAN JUDD: I'm trying to clarify the ambiguity, counselor.

ATTORNEY SILVER: Well, you're not clarifying anything. I think we have clarified it and you're just ignoring us.

DEAN JUDD: All right. You care not to respond to that, —let the record show.

Counselor, next question. In the Exhibit L which has been referred to several times, the applying organization indicated, on that sheet, that the chapter would not be under the dictates of any national organization, there is a constitution, there are membership cards, there is a national organ that the Students for a Democratic Society uses; I would like to know how does the local chapter expect to operate as an SDS without any affiliation?

ATTORNEY SILVER: You know, Dean Judd, I'm willing to concede that there is such an organization as SDS nationally and I, as I understand it, there are many SDS organizations nationally. In some chapters they're affiliated, some are unaffiliated. All I'm saying is that our students have taken a position from the beginning that they would not be subject to affiliation or subject to the jurisdiction of any other organization, and for purpose of clarification, we unequivocally indicated in our Exhibit 1 that they're not connected.

DEAN JUDD: All right. A question—an additional question, then, Attorney Silver—is, we would like to know why the applying organization wishes to use a name of an existing national organization if it will have no attachment or affiliation with it?

[39] ATTORNEY SILVER: Well, I didn't participate in the selection of name, but the word "democracy" sounds pretty good to me. It always has been a good word.

DEAN JUDD: No quarrel with the word.

ATTORNEY SILVER: It's always been a good word. I would think it's still a good word.

DEAN JUDD: Well, our question still, why does the local chapter care to use a national name when it's going to have no connection with it? Why did they state in the Student Affairs Committee minutes that they wanted to be able to get national propaganda from the organization. These are the things we're interested about. Now if this is the case, it does indicate to us an affiliation of some type.

ATTORNEY SILVER: What's the last thing you say?

DEAN JUDD: The organization when it came before the Student Affairs Committee indicated they wanted to use the name of a national organization because of what it represented. They also indicated they would want to be in a position to receive certain information from that organization. Now, we want to know why is this the case? If they want to be called this, then why is there no affiliation?

ATTORNEY SILVER: Do you have a record that they said that?

DR. BROWN: The question he's raising is one of the confusing points that was raised in the Court testimony.

ATTORNEY SILVER: There was no Court testimony.

DR. BROWN: Well–

ATTORNEY SILVER: Wait a minute. This is being recorded. Can we have a couple of minutes recess while you're checking that out?

DEAN JUDD: We're recessed for a few minutes.

Getting back to one of my statements regarding the use of national propaganda. This did not occur in the meeting; it will just be on my memory Paul Brown indicated this to me at one time. I'll retract it as a question. However, let me read this to you Attorney Silver, and I'll introduce these into the record as Hearing Officer's Exhibit 0, minutes of the Student Personnel Committee meeting on the 2nd October 1969. I'll share with you a copy of these as I read the questions. "Question: Why does the local chapter care to use the national name if it will not affiliate? Answer: — "Because the name [40] brings to mind the type of organization we wish to bring across, that is, a left-wing organization which will allow students interested in such to express themselves," and that was basically the statement.

ATTORNEY SILVER: Now, where are you reading from?

DEAN JUDD: Now, question 2 . . . (comments on tape, but unclear . . .) Do you care to respond to that point? In other words, our question was, can you clarify here, why do you use the national name if there will be no affiliation? This is one of the ambiguities that the court raised.

ATTORNEY SILVER: Well, I just read the document that you're offering and I can't see that there's anything in it that intimates that these students contemplate any illegal or disruptive practice.

DEAN JUDD: No, there's no question raised to that, counselor. We're raising question about why they would use a national name if there'd be no affiliation?

ATTORNEY SILVER: Well, I think they indicated that the name is identified with left-wing political thinking, and apparently–

DEAN JUDD: No disagreement there.

ATTORNEY SILVER: Yes.

DEAN JUDD: We're trying to get to the essentials here.

ATTORNEY SILVER: Yes, it's left-wing political think and apparently that's the reason why they thought they'd like that name. Just a minute–

Catherine Healey says that she'd like to say something on this question of the selection of the name.

DEAN JUDD: Please do; why don't you come over and sit in the chair so that we can get your answer down for the record. Before you begin, would you please mark this as Hearing Officer's Exhibit 0, and enter it into the record.

MISS HEALEY: During our initial meetings, the group of students present found no more an appropriate name than Students in favor of a Democratic Society.

DEAN JUDD: However, your application was quite different; your application stated that you would be a local chapter of Students for a Democratic Society, which is an existing name of an organization which does have national offices, regional offices, even though–

MISS HEALEY: Mr. Judd, we have since clarified that statement.

[41] DEAN JUDD: Okay, well, I've already ruled on that–it's been introduced and the court will have to exercise its prerogative when it sees that. For many, many reasons I've said I would not act upon that as an amended application because that was not what was before us.

Let me ask you another question here. The Student Affairs Committee minutes of 13 October 1969, which I'll introduce as Hearing Officer's Exhibit P. Mr. Tester—this goes back to the earlier comment that I was raising relative to, you know having the ideas of using national information; the question was raised as to the national alliance as to what the SDS meant by referring to themselves as a local chapter. In answer to that query, Mr. Theodore Tester, representing the SDS, indicated that there was no such thing as an SDS national, that individuals in the organization wanted to keep a loose arrangement and wanted to be able to pick up ideas from several of the factioned groups, and so forth. This is where I gathered the comment about getting ideas from different organizations. And, he further went on to say that the concept exists only in the minds of those who run it. As to the question of "what does the chapter mean," the response was: "that a local chapter of SDS cannot be categorized in the usual manner of student organizations; that the local SDS represents only certain ideas of the national SDS as presently developed."

Now, I'll show this to you, counselor. You see there were inferences in that testimony about alliance, and there were certain things coming from the national organization or several of its factioned groups.

MISS HEALEY: Yes.

ATTORNEY SILVER: Well, I'd like to clarify something here. You, Dean Judd, continually remark in the course of this proceeding, that the Judge is going to decide this, and the Judge is going to decide something else. Well, I'd like to make clear to you what my understanding is, that the Judge is not going to decide this, and he's not going to decide the other thing. The person who's going to decide it is Dr. James, and Dr. James should have before him all of the evidence upon which to make a decision, and I insist that an essential fact that he should have when he makes his decision is the fact that these students have submitted a signed statement that they unequivocally do not identify

or associate with any other organization. This is not for the Judge to decide. This is for Dr. James to decide when he is confronted with a signed [42] statement which indicates a clarification of what the Judge considered to be an ambiguous situation.

DEAN JUDD: Well, your point is well taken as far as that Attorney Silver; when I indicated the Judge will decide, I'm only saying that he will decide as to the propriety of this hearing, whether in fact the procedure as carried out through this case was in accord with his order. Dr. James will decide on the application—there's no question about that—your exhibit is introduced and I cared not to accept it as a consideration for the hearing, but it is there and he will read it and if he cares to take that into account when he makes his decision, that's his prerogative; I can't speak to that.

ATTORNEY SILVER: No.

DEAN JUDD: All right. Well, the Hearing Officer has no further questions to raise at this time. Does counsel have anything further that he would like to say before we close?

Recess granted for two minutes.

ATTORNEY SILVER: Yes, well, we have nothing further to say. Well, maybe I do, afterall, maybe I do have something to say. And it's along this line that I think there is no room whatsoever for identifying the proposed organization with any other organization. I think the position taken of non-identification is clear and unequivocal. I think the only basis upon which, the President can reasonably disapprove of this organization is by attacking the creditability of these students and if he's going to attack the creditability of these students, I think the burden is upon him and there is no evidence that has been put forth at this hearing which in anyway discredits these students, or raises any question as to their honesty and creditability.

DEAN JUDD: Let it be clear that I certainly didn't question that.

ATTORNEY SILVER: Okay, now if in the representations are untrue, then the burden is upon someone to show it and I respectfully submit that there's been no showing that these students are dishonest and if the President finds that the statement of purposes are consistent with legitimate functions of this institution, than I think there is no reasonable basis for denying approval of this organization.

DEAN JUDD: Thank you, Attorney Silver. The Hearing Officer has no further questions. Before adjourning, I'd just like to note again as I did earlier that as soon [43] as we have the transcript typed Attorney Silver, these will be available to you as I noted before. If you want to now request that I supply you with one under the conditions I listed, you won't have to contact me.

ATTORNEY SILVER: Yes, yes, sure, I'd like to get it.

DEAN JUDD: Okay, well fine, this hearing is now adjourned. I thank you all for coming; we're adjourned at 11:04 p.m.

ATTORNEY SILVER: Okay.

Hearing Officer Exhibit G
2107

COMMITTEE EXHIBIT NO. 42
[*New Left Notes*, June 10, 1968]

NATIONAL CONSTITUTION

NATIONAL CONSTITUTION

(as amended at the 1967 National Convention, Ann Arbor, Michigan)

PREAMBLE

Students for a Democratic Society is an association of young people on the left. It seeks to create a sustained community of educational and political concern; one bringing together liberals and radicals, activists and scholars, students and faculty.

It maintains a vision of a democratic society, where at all levels the people have control of the decisions which affect them and the resourrces on which they are dependent. It seeks a relevance through the continual focus on realities and on the programs necessary to effect change at the most basic levels of economic, political, and social organization. It feels the urgency to put forth a radical, democratic program whose methods embody the democratic vision.

ARTICLE I: NAME

The name of the organization shall be Students for a Democratic Society.

ARTICLE II: MEMBERSHIP

Section 1: Membership is open to all who share the commitment of the organization to democracy as a means and as a social goal.

Section 2: SDS is an organization of and for democrats. It is civil libertarian in its treatment of those with whom it disagrees, but clear in its opposition to any anti-democratic principle as a basis for governmental, social, or political organization.

Section 3: DUES: The amount and period of national dues shall be determined by the National Council.

Section 4: ASSOCIATES: Individuals who do not wish to join SDS, but who share the major concerns of the organization, may become associates, with rights and responsibilities as defined by the National Council.

ARTICLE III: CHAPTERS AND AFFILIATES

Section 1: Any group of five or more members may apply to the National Office for charter as a chapter.

Section 2: A chapter may be chartered by the regional council of the area in which it is organized, or by the National Council. The chapter shall submit a membership list, a constitution or statement of principles, and notification of officers or regional representatives. Chapters may be provisionally recognized by the Secretaries or appropriate regional officer pending the meeting of the National Council or regional council respectively.

Section 3: Chapters are expected to operate within the broad terms of policy set by the National Convention and the National Council. Points of conflict should be referred to the National Council and a procedure established to make the issue public to the organization. In matters judged to be detrimental to the interests of the organization, the National Council shall have the power to cease whatever activity has been brought into question. The matter shall be finally resolved by the National Council in meeting or referendum.

Section 4: ASSOCIATED GROUPS: Independent groups can affiliate as associates * * * *.

2170

COMMITTEE EXHIBIT NO. 54

Name *Denise Ryan*

Permanent Address _____

_____ Phone _____

(Zip Code)

Current Address _____

_____ Phone _____

(Zip Code)

School _____ Class _____

[X] Member of

NSU Chapter _____

[ ] Member-at-large

Include Zip Code - Please Print

LOCAL DUES

Sum _____

Date paid _____

Name *Elizabeth Gilbert*

Permanent Address *32245 Queensboro*

Farmington, Mich. Phone *626-3410*

(Zip Code)

Current Address *139 Phillips Hall*

MSU, Lansing, Mich. Phone *355-4827*

(Zip Code)

School *Michigan State* Class *Fresh.*

[X] Member of *M.S.U.*

Michigan State Chapter _____

[ ] Member-at-large

Include Zip Code - Please Print

48823

LOCAL DUES

Sum _____

Date paid _____

Name *Barbara Healy*

Permanent Address *649 Evergreen*

East Lansing, Mich Phone _____

(Zip Code)

Current Address *649 Evergreen*

East Lansing, Mich. Phone _____

(Zip Code)

School *Michigan State* Class _____

[X] Member of

Michigan State Chapter _____

[ ] Member-at-large

Include Zip Code - Please Print

LOCAL DUES

Sum _____

Date paid _____

2171

STUDENTS FOR A DEMOCRATIC SOCIETY is an association of young people of the left. It seeks to create a sustained community of educational and political concern; one bringing together liberals and radicals, activists and scholars, students and faculty. It maintains a vision of a democratic society, where at all levels the people have control of the decisions which affect them and the resources on which they are dependent. It seeks a relevance through the continual focus on realities and on the programs necessary to effect change at the most basic levels of economic, political, and social organization. It feels the urgency to put forth a radical, democratic program whose methods embody the democratic vision.

Preamble, SDS Constitution

This is to certify the membership of

_____

(signature)

in the Students for a Democratic Society. The SDS is an education and social action organization dedicated to increasing democracy in all phases of uncommon life. It seeks to promote the active participation of young people in the formation of a movement to build a society free from poverty, ignorance, war, exploitation and the inhumanity of man to man.

_____ Secretary, SDS

Students for a Democratic Society
1608 West Madison Street
Chicago, Illinois 60612

Name _____

Permanent Address _____

_____ Phone _____

(Zip Code)

Current Address _____

_____ Phone _____

(Zip Code)

School _____ Class _____

☐ Member of

_____ Chapter _____

LOCAL DUES

☐ Member-at-large Sum _____

Include Zip Code - Please Print Date paid _____

I, _____

hereby apply for membership in Students for a Democratic Society and enclose $5 as my annual national membership dues. I understand that $1 is a one year subscription to New Left Notes for the year starting:

Month _____ Day _____ Year ____

Name _____

Permanent Address _____

_____ Phone _____

(Zip Code)

Current Address _____

_____ Phone _____

(Zip Code)

School _____ Class _____

☐ Member of

_____ Chapter _____

LOCAL DUES

☐ Member-at-large Sum _____

Include Zip Code - Please Print Date paid _____

2117

VIOLENT STRUGGLES WITH THE P.L.P.

Members of the Progressive Labor Party and their supporters, referred to as the Worker Student Alliance, were barred from the United Front Against Facism conference. At the opening session, with the approval of the three national secretaries from the Chicago-based SDS faction, SDS members present helped the Plack Panthers to identify representatives of the ostracized groups and they were ejected, Mark Rudd reported.

On the following day, SDS officers and members admittedly joined Panthers in forcibly ejecting PLP members from a nearby park where they were distributing leaflets airing their views on the conference. The next day, PLP members resisted when told to discontinue leafleting in the park and "Ten PL-ers would up in the hospital," according to Rudd. The national secretary acknowledged that the SDS national leadership was subsequently criticized in a conference caucus because the PLP was not disruptive and "our rough handling of PL was more a gang-like vendetta than political." The national officers' response was that the error in handling PLP was "not too much struggle, but perhaps not enough struggle, confrontation, and polarization."

Mark Rudd reported more concern over criticis, in caucus that SDS national officers could not in good faith attack the Progressive Lavor Party when SDS was willing to share the speakers' podium at the UFAF conference with a spokesman for the Communist Party, U.S.A. Rudd stated SDS national officers who spoke at the conference "did attack the CP revisionists," but the attack "could have been stronger" and it was high time to launch an "intense struggle with the CP revisionists." Rudd expressed regret that the Black Panthers had turned to the Communist Party "for alliance and material aid" and had adopted "a legal form of struggle." The SDS response, he said, must be "to engage in revolutionary practice" and escalate the struggle." (pages 1, 2, and 3)

A news item from Boston alleged that 25 Progressive Labor Party and Worker Student Alliance members broke up an SDS meeting held on July 17 to plan fall strategy. John Pennington, leader of the Progressive Labor-controlled faction of SDS, reportedly announced that his group would continue such actions until it attained strength enough to seize the national office in Chicago. (page 9)

NEW EDITOR OF NEW LEFT NOTES

Morris Older was identified on the masthead as the editor of *New Left Notes*, rather than Joe Tashiro who had been listed as editor in previous editions.

CHANGE IN ADDRESS OF REGIONAL OFFICE

The address of the Michigan regional office of SDS was listed as Post Office Box 8316 in Detroit. Previous issues carried the address of Post Office Box 625 in Ann Arbor.

NEW LEFT NOTES, vol. 4, No. 26, August 1, 1969 (published by SDS National Office, 1608 West Madison St., Chicago, Ill.)

NATIONAL ACTION IN CHICAGO, OCTOBER 11

New Left Notes reprinted the text of a brochure titled, "BRING THE WAR HOME!" soliciting demonstrators for a National Action in Chicago October 11. The brochure, produced by the national office for mass distribution, invited readers to join SDS and "tens of thousands of people" who would be demonstrating in Chicago.

Recalling that about 10,000 persons turned out for demonstrations at the time of the Democratic National Convention and *"tore up pig city for five days,"* the brochure insisted that:

> *This fall, people are coming back to Chicago: more powerful, better organized, and more together*

*than we were last August. * * * We are coming back to Chicago, and we are going to bring those we left behind last year.* [Emphasis in original.]

The 1969 demonstrations under SDS auspices would differ from the 1968 action sponsored by the National Mobilization Committee To End the War in Vietnam in that protests would be registered, not just against the Vietnam war or "foreign policy," but against "the whole imperialist system." Calls for withdrawal of troops from Vietnam and the rest of the seven SDS demands were being coupled.

2125

NEW NORTHWEST REGIONAL OFFICE

The *New Left Notes* list of regional offices for the first time referred to a Northwest office at 4126 Roosevelt Way in Seattle. The address of the New Orleans regional office was changed to Post Office Box 4035, Carrolton Station, New Orleans. Regional offices listed now totaled 14. (page 6)

NEW LEFT NOTES, vol. 4, No. —,
September 12, 1969[1]

(published by SDS National Office, 1608 West Madison St., Chicago, Ill.)

A CALL FOR CLASS WAR IN THE STREETS

Violent and destructive aims of the SDS national leadership, to be reflected in its National Act in Chicago October 8-11 as well as in its long-range program, were acknowledged by SDS National Education Secretary Bill Ayers.

Ayers presented and defended views which he described as the "Weatherman" or "Weather Bureau" position in SDS. His remarks, printed in *New Left Notes*, were excerpted from a speech delivered by Ayers at a Midwest SDS confer-

[1]Front page wrongly dated Aug. 29, 1969.

ence held in Cleveland August 29-September 1, 1969, on the subject of the National Action. The strategy proposed for the forthcoming National Action in Chicago, he said, must be aimed at supporting the National Liberation Front in Vietnam "concretely," and at building Weatherman and a fighting revolutionary youth movement." This meant, to Ayers, not getting involved in actions which merely protested that something is wrong, but creating class war in the streets:

> We have to fight and show people through struggle our commitment, * * * our willingness to die in the struggle to defeat US imperialism. * * * October 8-11 is a concrete way that we can do that. I think people should push out this slogan "Bring the War Home". We're not just saying bring the troops home, bring the US troops home and deploy them some place some other time, we're saying bring the war home. We're saying you're going to pay a price because increasingly guys in the army are going to shoot you in the back, increasingly the guys in the army are going to * * * shoot over the heads of the blacks, increasingly this country is going to be torn down, and we're not going to bring the troops home to be deployed someplace else, we're going to bring the war home, WE'RE GOING TO CREATE CLASS WAR IN THE STREETS AND INSTITUTIONS OF THIS COUNTRY, and we're going to make them pay a price, and the price ultimately is going to be total defeat for them. That's the kind of thing that we have to convey, and that's the kind of thing that we have to build. [Emphasis supplied.]

Ayers derided those who called for "united front" actions and said it was necessary to ignore the advice of certain other groups in "the movement" such as the newspaper, the *Guardian*, and "certain local Newsreels." "* * * we have one task," Ayers said, "and that's to make ourselves into tools of the revolution."

Acknowledging that "movement people" would be among those alienated by SDS actions, Ayers claimed that the

"polarization" resulting from SDS actions nevertheless would also lead to change. In Detroit, for example:

> They've been to every drive-in, every high school, and people have an opinion of SDS. How many places has anybody even heard of it? When you say SDS in Detroit, they say oh, those are those broads who beat up guys, or those are those people who come into drive-ins, and that polarization is an important thing. * * *

The SDS denial that it has urged demonstrators to bring guns to Chicago in October does not mean that SDS rejects resort to arms and is not prepared for a military confrontation in the future, Ayers warned:

> And when we make clear that we're not urging anybody to bring guns to Chicago, we're not urging anybody to shoot from a crowd, but we're also going to make it clear that when a pig gets iced that's a good thing, and that everyone who considers himself a revolutionary should be armed, should own a gun, should have a gun in his home.
>
> Since our militance is going to obviously lead to a military confrontation, maybe not this year, then the fact that most of us in here don't even

HEARING OFFICER EXHIBIT H

133

COMMITTEE EXHIBIT NO. 1—Continued

STATEMENTS (continued):

Mark Rudd, an SDS leader in riots at Columbia University, in letter to president of the university dated April 12, 1968, prior to the seizure of campus buildings:

> "You are quite right in fearing that the situation is potentially dangerous. If we win, we will take control of your world, your corporation, your university and attempt to mold a world in which we and other people can live as human beings. We will have to destroy at times, even violently, in order to end your power and your system—but that is a far cry from nihilism."[31]

Greg Calvert, an SDS spokesman who has traveled in the Midwest to speak before various SDS chapters, was quoted as describing SDS motives and goals in society today as follows:

> "We are trying to build a guerrilla force in an urban environment; we are actively organizing sedition."[32]

Carl Davidson, an SDS spokesman, speaking at the University of Illinois in 1967:

> Davidson stated that students could not free their universities without freeing all of society and that anything destroying the "United States system" would be beneficial. He told the student listeners that one weapon was to shut down "this place".[33]

An SDS leader, speaking at the SDS national convention in June, 1965, at a camp near Kewadin, Mich., called for deliberate violation of the sedition statutes by Students for a Democratic Society members, which, it was hoped,

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[31] Ibid.

[32] Ibid.

[33] Ibid.

would result in mass arrests and a "political trial" of the organization.[34]

Position on Communists and "communism"

Michael Klonsky and *Bernardine Dohrn*, two of the three national secretaries of SDS, announced at a public session of the organization's June 1968 convention that they were "communists". They insisted the word be spelled with a small "c" to distinguish SDS leadership from that of the disciplined Communist organizations such as the Communist Party.[35]

Michael Klonsky, SDS national secretary, speech at a rally at the University of Florida, April 11, 1969:

> He said that it was time for revolution and for students and the oppressed minority to kick out the present system and form a "truly communistic society that would work for the poor and the oppressed."[36]

[34] Hoover, Feb. 10, 1966 testimony, previously cited. SDS leader not identified.

[35] James L. Gallagher, testimony previously cited.

[36] William C. Sullivan, April 27, 1969 statement, previously cited.

HEARING OFFICER EXHIBIT L

RCD
3 October 1969

What follows is a brief statement of purpose of the group of students at CCSC who would like to form a local chapter of Students for a Democratic Society (S.D.S.).

1. Because the university is intended to be the arens of education, where there is an unfettered exchange of ideas, S.D.S. would provide *a forum* of discussion and self-education for students developing an analysis of American society and institutions, including higher education, and the world situation in general.

2. Because it is felt that ideas without parallel in deeds are empty and ephemeral, and that no area of life exists in a vacuum and unrelated to all other areas of life, S.D.S. would provide *an agency* for integrating thought with action so as to bring about constructive changes in the university, in American life, and the world.

3. Because of the responsibility of all peoples for the welfare of others, S.D.S. would provide *a coordinating body* for relating the problems of leftist students and other groups, such as the student body as a whole, the working class, the black populace or whatever other individuals or groups in fact or potentially in accord with the purposes of the CCSC chapter of S.D.S.

Officers: Lawrence Stub, Frank Ziccardi.

Procedures: (1) meetings once a week. (2) membership completely open to students and faculty. (3) *voluntary dues.* (4) elections held regularly (5) CCSC Students for a Democratic Society are not under the dictates of any National organization.

HEARING OFFICER EXHIBIT N

COMMITTEE EXHIBIT NO. 1—Continued

Oct. 16, 1968

The policy of SDS as a national organization is that no chapter may be recognized as affiliated with the national organization if it has a policy of exclusion of anyone from membership of the local chapter on the basis of race, religion, national origin, or political persuasion. *The George Washington University chapter* is recognized by the national organization, and thus meets these requirements.

/s/ Mike Spiegal
Member, National Interim
Committee, SDS

HEARING OFFICER'S EXHIBIT O

CENTRAL CONNECTICUT STATE COLLEGE
New Britain, Connecticut

Minutes of the Student Affairs Committee Meeting
13 October 1969

Discussion on Students for a Democratic Society (S.D.S.)- Prior to inviting in representatives of the above referred organization the Committee discussed the organization with the following points being indicated by the Committee: (1) What was to be the relationship of the local chapter to the national organization, (2) concern was evidenced over the violent response of the national organization and many local chapters throughout the country, (3) Which wing of the national organization will the local chapter affiliate or associate with, (4) such an organization should have the right to exist on the campus, and (5) the Committee felt the statement of purpose was clear and in theory most could subscribe to it. The Committee indicated that the organization had not complied with the Statement on Rights, Freedoms, and Responsibilities of Students section concerning the recognition of organizations, to wit: statement of procedures, criteria for membership and a list of officers who were in good academic standing. The Committee then invited in representatives of the S.D.S., Miss Catherine Healey, student, and Dr. Haines Brown, faculty advisor. The following represents a summary of the comments by the Committee and S.D.S., representatives:

(1) Q. What are the ties between the local and national?
A. The Chapter does not affiliate with the national organization; we will be completely independent.

(2) Q. Why does the local chapter care to use the national name if it will not affiliate?
A. Because the name brings to mind the type of organization we wish to bring across, that is

a left-wing organization which will allow students interested in such to express themselves.

(3) Q. How would you respond to issues of violence as other S.D.S., chapters have?
A. Our action would have to be dependent upon each issue.

(4) Q. Would you use any means possible?
A. No I can't say that; would not know until we know what the issues are.

(5) Q. Would you be open to all students?
A. Yes.

(6) Q. Would you seek funds from Student Government?
A. Yes.

(7) Q. Could you envision the S.D.S. interrupting a class?
A. Impossible for me to say.

(8) Q. Has the Statement of Purpose as presented to the Student Affairs Committee been approved by the membership?
A. Yes.

The Committee requested of the representatives present that they: (a) produce a set of procedures (b) criteria for membership (c) list of officers who are in acceptable academic standing and (d) a statement of what affiliation to the national organization is intended by the local chapter. The Committee indicated that it expected to act in good grace and intellectual honesty on the organization's request for recognition but would defer action until such time as the above requirements are met. When asked when this would be it was noted that the Committee would be meeting next on 13 October.

HEARING OFFICER'S EXHIBIT P

CENTRAL CONNECTICUT STATE COLLEGE
New Britain, Connecticut

Minutes of the Student Affairs Committee Meeting
13 October 1969

Present: Dr. DeNuccio, Mr. Erickson, Dr. Kahn, Miss Lippia, Mr. McDonald, Miss Schaperow, Professor Swann, and R. L. Judd, Chairman.

The meeting was called to order at 3:40 p.m., in the Conference Room of the Vice-President for Academic Affairs by the Chairman.

1. The minutes of the 2 October 1969 meeting were approved as printed on motion of (Lippia-Kahn).

2. Committee action on recognition of propose college student organizations.

a. Commuter Club – The Committee reviewed the constitution of the Commuter Club whose purpose shall be to "unify commuters into a recognizable force that will promote greater participation in all phases of campus life." The Organizational officers at this time are President Hopeton Scott, Secretary Nancy Larson and Treasurer Charles Chauvin; faculty advisor, Mr. Enck, History Department Students.

Motion, (Lippia-Swann) that the Commuter Club be recognized as an official college organization.

Motion carried, 8 yeas *SAC-69-4*

b. Physical Education Majors Association – The Committee reviewed the constitution of the above referred group whose purpose is to provide services pertaining

to Physical Education to all students, faculty, and the community. To promote interest in Physical Education, Health, and Recreational Activities. To encourage membership in the State and National Physical Educational Professional Organization. To uphold the standards of the Physical Education profession. To provide social and recreational activities for its members." Present officers are President James Kahn, Vice-President David Campo, Corresponding Secretary Diane Albert, Recording Secretary Nancy LeFebvre, Treasurer Kenneth McPhee; faculty advisor, Miss Mary Hoyle, PE Department.

Motion, (Kahn-DeNuccio) that recognition be granted to the Physical Education Majors Organization.

Motion carried, 7 yeas *SAC-69-5*

c. Liberal Party – The Committee reviewed the constitution of the Liberal Party whose purpose is "to promote better campus relations along with having a second party to run 42 candidates in the All-campus elections which occur during the latter part of April." The officers are President Brendan Kennedy, Vice-President Rosemary Campane; faculty advisor, Dr. Charles Kerr, Political Science Department.

Motion, (Erickson-Lippia) that recognition be granted of the Liberal Party.

Motion carried, 8 yeas *SAC-69-6*

d. Il Circolo Italiano – The Committee reviewed the purpose of the Il Circolo Italiano stated as follows "... in order to promote good fellowship and to promote the best interests in elements of Italian culture, art, and civiliattion, do ordain, and establish this constitution as the fundamental law of this organization." The current officers are President Louis Magnano, Vice-President Nicky Cofaldi, Secretary Nancy Rosso, Treasurer Elio Gugliotti; faculty advisor, Mr. Giovanni Lonardo, Modern Language Department.

Motion. (DeNuccio-Lippia) that recognition be granted to the Il Circolo Italiano.
Motion Carried. 8 years *SAC-69-7*

e. Students for a Democratic Society (SDS) – Considerable discussion was made on the above organization. Question was raised as to the national alliance and to what the S.D.S. meant by referring to themselves as a "Local Chapter." In answer to this query, Mr. Theodore Tester representing the S.D.S. indicated that there was no such thing as a S.D.S. National; that individuals in the organization wanted to keep a loose arrangement and wanted to be able to pick ideas from several of the factioned groups; he stated that the concept of S.D.S. exists in the minds of those who run it. As to the question of what does a chapter mean, the response was that a local chapter of S.D.S. cannot be categorized in the usual manner of student organizations; that the local S.D.S. represents only certain ideas of the national S.D.S. as presently developed.

Considerable comment was made on what other types of political action groups are on campus such as the Young Americans for Freedom, the Young Democrats, and the Young Republicans and considerable question was raised that on the exclusion of an action group representing another sphere of thought, to wit if we have one group such as YAF representing a conservative right wing group should we not allow for students to identify with one representing the left wing?

The Committee reviewed the statement of purpose of the organization which is: "Because the university is intended to be the arena of education where there is an unfettered exchange of ideas, S.D.S. would provide *a forum* of discussion and self-education for students developing and analysis of American society and institutions, including higher education, and the world situation in general. Because it is felt that ideas without parallel in deed are empty and ephemeral, and that

no area of life exists in a vacuum and unrelated to all other areas of life, S.D.S. would provide an agency for integrating thought with action so as to bring about constructive changes in the university, in American life, and the world. Because of the responsibility of all peoples for the welfare of others, S.D.S. would provide *a coordinating body* for relating the problems of leftist students and other groups, such as the student body as a whole, the working class, the black populace or whatever other individuals or groups in fact or portentially in accord with the purposes of the CCSC chapter of S.D.S." Current officers are Lawrence Stub, Frank Ziccardi, and faculty advisor, Dr. Haines Brown, History Department.

Motion, (Kahn-Schperow) that recognition be granted to Local Chapter, S.D.S. The Committee in reaching a vote on this motion qualified itself as follows: (a) that in so voting it did so with the concept in mind of allowing opposing organizations to present various views, (b) local chapter has claimed no national allegiance to a super-organziation, (c) that the Committee would consider the immediate suspension of the local chapter if its activities, programs, and functions were incompatible with those of the College and specifically calls to the attention of the Chapter Section 5-E of the Statement on Rights, Freedoms and Responsibilities of Students is understood by this organization: "Students do not have the right to deprive others of the opportunity to speak or be heard, to invade the privacy of others, to damage the property of others, to disrupt the regular and essential operation of the College, to to interfere with the rights of others." Lastly, that the recognition of the organization is acted upon in light of allowing students to have the opportunity to exchange ideas through an organization in the academic market place.

A minority viewpoint was presented as follows: (a) that the organization did not conform to meeting the

implied requirements for institutional recognition as other campus organizations have, to wit a specific consituation, and (b) there is a serious lack of clarity between what the meaning of local chapter is and fact that the organization claims not to be under the dictate of any national organization, and lastly, that the minority vote was made not to prohibit a left wing group but on the nature of the present organization before the Student Affairs Committee.

Motion Carried, 6 yeas, 2 nays *SAC-69-8*

3. Discussion was next on policies and procedures for recognizing organizations.

Motion, (Kahn-Swann) that no new organ-

Motion, (Kah-Swann) that no new organiations be acted upon until the Committee has developed more acceptable procedures for such review.

Motion Carried, 7 yeas *SAC-69-9*

Meeting adjourned at 5:11 p.m.

Respectfully submitted,

Richad

Richard L. Judd
Executive Secretary

tp

APPELLANT'S EXHIBIT NO. 1

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CATHERINE J. HEALY, *et al.*,
Plaintiffs,

v. Civil Action No. 13721

F. DON JAMES, *et al.*,
Defendants.

May 12, 1970

STATEMENT

The undersigned, being the plaintiffs in the case of Catherine J. Healty et al. v. F. Don James et al., make the following statement:

We reaffirm the statement of purposes recited in the application submitted to the Student Personnel Committee.

However, in view of the decision of T. Emmet Clarie, United States District Court Judge in this case, dated April 24, 1970, there appears to be ambiguity concerning the structure of the organization referred to as a "local chapter of Students for a Democratic Society."

In order to remove all doubt, we hereby affirm that the proposed organization shall be called Students for a Democratic Society of Central Connecticut State College, and it

shall have no connection whatsoever to the structure of an existing national organization, or organizations, bearing the name Students for a Democratic Society. Furthermore, the organization shall be unaffiliated with any other organization.

We affirm out constitutional rights of freedom of speech and freedom of association. It is our expectation that in the exercise of our constitutional freedoms that we may be effective in communicating and establishing greater understanding with students of all political persuasion from the left to the right.

We claim that we are entitled to the presumption of honorable and legal motives and intentions.

We claim further that any inference that the undersigned have an illegal purpose is unwarranted, discriminatory and unconstitutional.

/s/Paul Peter Brown

/s/Catherine J. Healy

/s/Joel H. Blunt

/s/Edward John O'Neil

/s/ [signature illegible]

/s/Peter David Brown, Jr.

CENTRAL CONNECTICUT STATE COLLEGE

New Britain, Connecticut

July 10, 1970

Office of the President

Mr. Richard L. Judd, Acting Dean of Student Affairs
Central Connecticut State College
New Britain, Connecticut

Dear Mr. Judd:

In accordance with the Memorandum of Decision, 24 April 1970, of the Honorable T. Emmet Clarie, United States District Judge, hearings were held on 19 and 25 May 1970 by the Acting Dean of Student Affairs who was designated by this office to conduct the hearings. Applicants listed in Civil Action 13721 (as stipulated and agreed upon by counsel) were notified of the hearings and given the opportunity to be heard.

During these hearings, the applying student group through its attorney, Abraham S. Silver, was requested to clarify its affiliation and/or association with the national organization of Students for a Democratic Society (a.k.a. SDS) and/or any of its splinter groups. The Hearing Officer raised questions several times on the former, and applicants' attorney refused to clarify the ambiguity existent in the application of the applying group of 3 October 1969.

Thus, the hearing failed to resolve a significant question which the College sought to clarify; that is, what is the nature of affiliation or association of the applying group? If the group utilizes the name of an existing organization, how can it "not be under the dictates of any organization" as the applying group stated? (Hearing Officer's Exhibit L)

The Hearing Officer introduced as his Exhibit G, on P. 2107, the national constitution of SDS, which in Article 3 states certain requirements applying to chapters and affiliates, e.g., "chapters are expected to operate within the broad terms of policies set by the national convention and the national council." Furthermore, Hearing Officer's Exhibit N, P. 713, contains a note signed by a Mike Spiegel indicating a national SDS policy of requiring certain things of local chapters.

Also, Hearing Officer's Exhibit G, Ps. 2170 and 2171, contain reproductions of local and national membership cards, indicating ties between local and national offices, and further denotes joint membership record-keeping systems.

In addition to not resolving ambiguous portions of the group's application, the Hearing Officer introduced other documents detailing various activities of local SDS Chapters, Regional Headquarters of the SDS, the National Offices, and officers associated with the organization. It appears to me that these activities would be a disruptive influence at CCSC.

Specific reference is drawn to Hearing Officer's Exhibit G, P. 2117, detailing disruptive activities of SDS in Columbus, Ohio, schools; on P. 2125, statements calling for "class war in the streets"; Hearing Officer's Exhibit H, P. 133, quoting a Mark Rudd, "we will have to destroy at times, even violently, in order to end your power and your system" and on the same page, a Greg Kalbert saying, "to build a guerilla force in an urban environment; we are actively organizing sedition;" Hearing Officer's Exhibit N examines the activities of the George Washington University SDS which fomented violence, including the take-over of several buildings and caused significant damage to University property.

Accordingly, in view of the documentary evidence filed by the Hearing Officer, and the intransigence of counsel for the applicants, I reaffirm my earlier decision to deny recognition to the applying group. Recognition of such group, in my judgment, would be contrary to the orderly process of change and would be contrary to the philosophy and lawful mission of this College.

Sincerely yours,

F. Don James
PRESIDENT

fdj: lp

OPINIONS

The opinion of the United States Court of Appeals for the Second Circuit, dated July 15, 1971, and the opinions of the United States District Court, District of Connecticut, dated October 29, 1970 and April 24, 1970, are contained in the Appendix to the Petition for a Writ of Certiorani at pp. la, 40a and 50a respectively.

Supreme Court of the United States

No. 71-452 ----October Term, 19

Catherine J. Healy, Et Al.,

Petitioners

v.

F. Don James, Et Al.

ORDER ALLOWING CERTIORARI. Filed December 7 ---------- , 19 71

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second ---------- Circuit is granted.

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SEP 29 1971
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-452

CATHERINE J. HEALY, *et al.*,

Petitioners,

—v.—

F. DON JAMES, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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INDEX

	PAGE
Opinions Below	1
Jurisdiction	2
Question Presented	2
Statute and Constitutional Provisions Involved	2
Statement of the Case	2
Reasons for Granting the Writ	8
Conclusion	16
Appendix	
Opinion of the United States Court of Appeals for the Second Circuit	1a
Opinion of the United States District Court, District of Connecticut, October 29, 1970	40a
Opinion of the United States District Court, District of Connecticut, April 24, 1970	50a
Judgment	65a

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ACLU of Virginia, Inc. v. Radford College, 315 F. Supp. 893 (W.D. Va. 1970) 11

Bantam Books, Inc. v. Sullivan, 372 U.S. 58 (1963) 14

PAGE

Brandenberg v. Ohio, 395 U.S. 444 (1969) 13
Brooks v. Auburn University, 296 F. Supp. 188 (M.D. Ala.), *aff'd* 412 F.2d 1171 (5th Cir. 1969) 12

Eisner v. Stamford Board of Education, 440 F.2d 803 (2d Cir. 1971) 9, 14

Freedman v. Maryland, 380 U.S. 51 (1965) 14

Johnson v. Branch, 364 F.2d 177 (4th Cir. 1966), *cert. denied*, 385 U.S. 1003 (1967) 10
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Keyishian v. Board of Regents, 385 U.S. 589 (1967) 8

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Marsh v. Alabama, 326 U.S. 501 (1946) 11
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Speiser v. Randall, 357 U.S. 513 (1958) 14
Stacy v. Williams, 306 F. Supp. 963 (N.D. Miss. 1969) .. 12

Tilton v. Richardson, 39 U.S.L.W. 4857 (1971) 9

PAGE

Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969) 8, 9, 11

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Whitney v. California, 274 U.S. 357 (1927) 13

Constitutional Provisions:

United States Constitution

First Amendment 2, 8, 9, 10, 11, 12, 13, 14, 15

Fourteenth Amendment 2

Twenty-Sixth Amendment 9

Statutes:

United States Code

28 U.S.C. §1254(1) 2

42 U.S.C. §1983 2

Other Authorities:

Monaghan, First Amendment "Due Process," 83 Harv. L. Rev. 518 (1970) 14

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. .....

CATHERINE J. HEALY, *et al.*,

Petitioners,

—v.—

F. DON JAMES, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered July 15, 1971.

Opinions Below

The two District Court opinions in this case, one requiring a hearing, the other reviewing it, appear respectively at 311 F. Supp. 1275 (D. Conn. 1970) and 319 F. Supp. 113 (D. Conn. 1970). They are set out in the Appendix, *infra*, pp. 40a and 50a. The opinion of the Court of Appeals is unreported. It is set out in the Appendix, *infra*, p. 1a.

Jurisdiction

The judgment of the United States Court of Appeals for the Second Circuit was entered on July 15, 1971. The jurisdiction of this Court rests on 28 U.S.C., §1254(1).

Question Presented

Whether the president of a state college may deny to a student political organization access to university facilities without a showing of a clear and present danger of violence or campus disruption.

Statute and Constitutional Provisions Involved

The statute involved is section one of the Civil Rights Act of 1871, 42 U.S.C. §1983. The constitutional provisions are the First and Fourteenth Amendments.

Statement of the Case

Petitioners, students at Central Connecticut State College (CCSC), met together in September of 1969 and decided to request the college administration to grant official recognition to what they styled "a local chapter of Students for a Democratic Society" that they wished to form (S. ¶8).[1] Official recognition, had it been granted, would have allowed petitioners to use the college's bulle-

[1] The symbol "S" refers to a stipulation between petitioners and repondents, dated March 10, 1970, and the exhibits attached thereto, which are part of the Record filed with the Clerk of this Court.

tin boards and newspaper for S.D.S. notices and to use campus building for meetings (H. pp. 17-18; 46; 47).[2]

Petitioners' application came before the Student Affairs Committee, a student-faculty body, on October 2, 1969. The Committee, concerned with violence on campus and the violent reputation of S.D.S.'s national organization, asked what the ties of the local chapter to the national would be. Petitioners replied that the local chapter would be "completely independent" and that the name was being used only because it "brings to mind the type of organization [they] wish to bring across, that is a left-wing organization which will allow students interested in such to express themselves." The committee also asked petitioners whether they envisioned that S.D.S. might become involved in campus violence or the disruption of classes. They replied that they could not predict what the organization's attitude might be without knowing all the particulars of the situation (X. O. pp. 2-3).[3] On October 13, 1969, after having received a formal statement from petitioners that CCSC-SDS would not be "under the dictates of any National organization" (X. L.), the committee approved the application by a vote of 6 to 2, with the explicit condition "that the Committee would consider the immediate suspension of the local chapter if its activities, programs, and functions were incompatible with those of the College" (X. P. pp. 2-3). Respondent James, the President of the University, declined to accept the advice of

[2] The symbol "H" refers to the transcript of the first hearing before Judge Clarie which is part of the Record filed with the Clerk of the Court.

[3] The symbol "X" refers to exhibits attached to the Report of the Hearing Officer, which is part of the Record filed with the Clerk of this Court.

the committee and, on October 30, 1969, denied recognition to the chapter; he felt that "the statement of purpose to form a local chapter of Students for a Democratic Society carries full and unmistakable adherence to at least some of the major tenets of the national organization, loose and divided though that organization may be" (S. ¶13). When petitioners and others met, a week later, in a coffee shop at the Student Center on campus to discuss the respondent James's decision, he interpreted this as a meeting of CCSC-SDS and ordered the meeting to disband (S. ¶¶14, 15 (exhibit E)). Petitioners complied without protest.

On February 24, 1970, petitioners began this lawsuit to seek official campus recognition of CCSC-SDS. After a hearing on a motion for preliminary injunction, Judge Clarie ordered the college to hold a hearing to resolve ambiguities about the relationship between CCSC-SDS and the national organization. He felt that "[t]he term itself 'local chapter,' strongly infers some sort of affiliation with a more extensive parent organization. . . ." App., *infra*, p. 62a. The hearing was held May 19th and 25th, 1970.[4]

[4] The district court held that the hearing met "the formal requisites of administrative due process," App., *infra*, p. 42a, and did not comment on its narrowness. The majority in the Court of Appeals, however, felt that "disruptive tactics" by petitioners' counsel were the root and cause of the hearing's derailing. This evaluation seems to underlie the majority's rather cryptic conclusion that petitioners "failed to avail themselves of the procedural due process accorded to them." App., *infra*, p. 20a. The characterization of counsel's behavior is unfair, and it is necessary to pursue the point at some length so that this Court is not misled about the heart of the controversy in this case.

The Court of Appeals labelled a number of incidents "disruptive tactics": (1) an objection to tape-recording of the hearing, rather than having a stenographic transcript; (2) an objection to respondent James's absence; (3) two exclamations of exasperation: that

Little additional relevant evidence came to light. For their part, petitioners submitted a statement signed by five of

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"[t]his [hearing] is really terrific" and that he, counsel, was "outraged;" and (4) calling of respondent James as a witness and asking him whether he had made any prejudgment of the case and whether he would be influenced by petitioners' statement that they would have no connection with the SDS national office. App., *infra*, pp. 10a-13a.

(1) The objection to tape recording was made on the ground that it would be impossible to tell until after the hearing whether any portions of the testimony had been missed. (T. 7. The symbol "T" refers to the typed transcript of the administrative hearing of May 19 and 25, 1970, which is part of the Record filed with the Clerk of this Court.) There is no indication in the record that counsel's action was in bad faith, and, in fact, one portion of the typed transcript of the tape indicates that a question from the hearing officer was too unclear to be transcribed (T. 40).

(2) Although the district court opinion stated that a hearing officer could hold the hearing in place of respondent James (App., *infra*, p. 61a), petitioners could legitimately desire respondent James, who would make the final decision, to hear their argument personally; had counsel not objected to this at the hearing, he would surely have been held, on review, to have waived whatever right he might have had to appear before respondent James personally.

(3) From the cold record, one could reasonably conclude that the hearing officer himself precipitated counsel's exasperation. The hearing officer refused to allow respondent James to answer any of counsel's questions. He admitted, for example, that James was counsel's witness but ruled that his was "an improper line of questioning for a client's witness" (T. 30). While he claimed that the hearing was "not a legal proceeding" (T. 7), he continually made final evidentiary decisions that juggled the rules so that only that evidence favorable to James's eventual decision was received. The record is rife with examples of unprincipled decisions fleshed out with ill-used legal terminology. The hearing officer ruled questions about respondent James's prejudgment "irrelevant and immaterial" (T. 27); he ruled that evidence before a Congressional Committee could not be objected to as hearsay (T. 37); citing the advice of "our counsel," he ruled that petitioners' written statement that they had no tie to the SDS national and changing the name of the proposed organization to eliminate the objectionably ambiguous term "local chapter" was an "amended application" that was

their number that SSCS-SDS "shall have no connection whatsoever to the structure of an existing national or-

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"not germane" because "not introduced in the federal record" (T. 29)—apparently reasoning that the ambiguities that the federal judge found in the record could only be resolved by the evidence then before the federal judge. In face of these bizarre rulings, one could hardly say that the lawyer was being intemperate, much less disruptive, for saying "this is really terrific" or that he was "outraged."

(4) While the procedure of calling respondent James personally to the stand as a witness was perhaps unorthodox, it appeared to be necessary in this case. In the first place, counsel wanted the record to reflect that respondent James had made public statements in a speech to the Lions Club which indicated that he had already decided the case, without having held the hearing on which he was to base his decision. Confronting an administrative officer with his own damning statements is certainly not graceful—it is bound to produce a hostile witness—but neither is prejudgment graceful. James appeared voluntarily at the hearing; given this opportunity, counsel proceeded to examine him with the directness that any competent trial lawyer would have practiced in the same situation. Faced with a difficult tactical problem—how to get evidence of prejudice into the record—he used an unusual technique, and his aim seems to have been to reach the truth, not to disrupt the hearing. But counsel had another, more basic reason for wanting to deal directly with respondent James. The hearing officer had effectively stifled petitioners—especially by ruling that their statement disavowing ties to the SDS was not germane. Counsel wanted to cut through the hearing officer's grudging procedure and find out what James thought of the statement, whether he would consider it, and whether he would make any judgments about petitioners' credibility.

Perhaps most important of all, at no time during the hearing, as spirited as the interchanges between counsel and hearing officer seem to have been, did the hearing officer object to counsel's conduct or indicate that he thought counsel's tactics disruptive. The record ought not be distorted now to make it appear that counsel wilfully disrupted the hearing. The line between argument and disruption is sometimes a fine one—compare *In re McConnell*, 370 U.S. 230, 235-36 (1962) with *Parmelee Transportation Co.* v. *Keeshin*, 294 F.2d 310, 314 (7th Cir. 1961) *rev'd*, 370 U.S. 230 (1962)—and an appellate court should be loath to condemn on the basis of a cold, written record.

ganization, or organizations, bearing the name Students for a Democratic Society" (X. 1)[5] and their faculty advisor testified that SDS on a campus where he has been a student, two or three years previously, had "no connection whatsoever" with any outside group (T. 36). Over petitioners' counsel's objection, the hearing officer introduced into evidence the records of Hearings held by the House of Representatives' Committee on Internal Security concerning Students for a Democratic Society to establish the violent character of the SDS national organization and to show provisions in the SDS national constitution requiring adherence to national policies by local affiliates (X. G., H., I., N.).

On July 10, 1970, Respondent James again denied petitioners' application. He stated that the hearing had failed to resolve the ambiguity concerning the connection between CSC-SDS and the national SDS-organization; he failed to understand, he said, how the group could be totally free of any influence from an organization whose name it used. This, he apparently felt, justified imputing to the local the motives of the national. He concluded that recognition "would be contrary to the orderly process of change and would be contrary to the philosophy and lawful mission of this College."

Petitioners returned to Judge Clarie, who had retained jurisdiction in the suit, and moved to reject James's findings. Judge Clarie denied their motion and, on the ground that petitioners had "not sustained their burden of demonstrating that their identifying with the national corporate name of the SDS permits them to function with absolute

[5] The hearing officer volunteered that he did not question the credibility of these petitioners (T. 42).

freedom from the dictates, influence and image of the national organization, notwithstanding their verbal protests to the contrary," App., *infra*, p. 48a, granted summary judgment to respondents. The United States Circuit Court of Appeals for the Second Circuit affirmed the judgment on July 14, 1971, on the ground that petitioners had "not met their burden of complying with the standard established by the college for recognition of campus organizations." App., *infra*, p. 21a. Judge Smith dissented. App., *infra*, p. 32a.

Reasons for Granting the Writ

Certiorari should be granted in this case because the Court of Appeals has decided an important question of federal law which has not been, but should be decided by this Court, and because the decision conflicts in principle with analogous students' rights cases in other circuits. Because "[t]he classroom is peculiarly the 'marketplace of ideas,'" *Keyishian* v. *Board of Regents*, 385 U.S. 589, 603 (1967), this Court should be vigilant to make sure that no one set of ideas achieves an official monopoly.

In *Tinker* v. *Des Moines Independent Community School District*, 393 U.S. 503 (1969), this Court ruled that without a showing of material and substantial harm to the educational process, a public secondary school could not forbid students to wear antiwar armbands in school; school officials must establish that First Amendment activity is "materially and substantially interfer[ing] with the requirements of appropriate discipline in the operation of the school" (393 U.S. at 513), before they can forbid the activity. The Court in that case, however, was dealing the rights of high school and junior high school students.

petitioners are college students and, because they are more mature and politically responsible[6] than *Tinker's* students, less weight must be accorded a college administrator's interest in discipline and order. See *Eisner* v. *Stamford Board of Education*, 440 F.2d 803, 808 n. 5 (2d Cir. 1971).

Certainly there is an interest in orderly processes on campus, just as in our society as a whole; but before such an interest interferes with the exercise of First Amendment rights, college administrators—like all other public officials—must show a clear and present danger of some substantive evil occurring.

Respondents have abstractly conceded throughout that petitioners have a right to organize and otherwise exercise their First Amendment rights, but have argued that petitioners have no such right to pursue these activities on the college campus and that the burden is on petitioners to prove that their activities are consonant with "the philos-

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[6] Mr. Chief Justice Burger, writing for the plurality in *Tilton* v. *Richardson*, 39 U.S.L.W. 4857 (1971), found a constitutionally significant distinction between elementary and secondary school students on the one hand and college students on the other. In that case, the statute which authorized federal funds to finance the building of "academic facilities" on the campuses of church-related colleges was challenged as an unconstitutional establishment of religion. One of the reasons cited to support the constitutionality of the Act, as distinguished from impermissible enactments which financed pre-college parochial schools, see *Lemon* v. *Kurtzman*, 39 U.S.L.W. 4844 (U.S. Sup. Ct. 1971), was that "college students are less impressionable and less susceptible to . . . indoctrination." 39 U.S.L.W. at 4861.

The Twenty-Sixth Amendment, which has enfranchised virtually every college student in America, further reflects the notion that the maturity of college-age students requires legal recognition. See *Jolicoeur* v. *Mihaly*, 40 U.S.L.W. 2142 (Cal. Sup. Ct. 1971). The Amendment increases the burden on college administrators to abide by the notions of the First Amendment, lest they inadvertently disenfranchise those so recently given the vote.

ophy and lawful mission" of Central Connecticut State College. Both courts have essentially agreed with respondents' position. The district court felt that the burden was on petitioners to prove themselves without ideological stain; the circuit court reasoned that petitioners' failure to avail themselves of the procedural due process granted them was a sufficient reason to support the denial.[4] All these viewpoints, really only variations on a single theme, offend present notions of the First Amendment.

In the first place, the college's action is not merely the failure to bestow a "stamp of approval," as the Second Circuit majority characterized it; in practical effect, it forbids respondents to organize at all. As Judge Smith pointed out in dissent, "what is at issue is whether these students will be permitted to use the buildings and grounds of the campus to conduct meetings and discussions . . ." however informal the meeting and public the place where it is held. When, in November, 1969, some of petitioners and other students met in the campus coffee shop to discuss respondent James's action, two of the Deans of the college appeared and forbade them to continue their meeting on college property. Nor are petitioners permitted to use campus bulletin boards or the student newspaper to inform the student body about meetings and therefore cannot effectively communicate with those most likely to be like-minded. The community to which petitioners belong is

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[4] The Circuit also reasoned that the failure "to submit a copy of their charter or by-laws" (App., *infra*, p. 20a) supported respondent James's denial of the application. Since James did not rely on this as a reason for denying the petition—nor did the district court—it is improper for a reviewing court to adduce it as a reason to justify James's decision. *Trister* v. *University of Mississippi*, 420 F.2d 499, 503 (5th Cir. 1969); *Johnson* v. *Branch*, 364 F.2d 177, 181 (4th Cir. 1966), *cert. denied*, 385 U.S. 1003 (1967).

Central Connecticut State College. They do more than merely attend "during prescribed hours for the purpose of certain types of activities" as did the high school students in *Tinker*, 393 U.S. at 512. Petitioners and other students spend four years of their lives in this community, and the members of that body have an "interest in the functioning of the community in such manner that the channels of communication remain free." *Marsh* v. *Alabama*, 326 U.S. 501, 507 (1946). Just as the Court in *Marsh* subordinated property rights of a private corporation to the First Amendment in order to facilitate that communication, so here it should act to make college administrators aware that they have an identical obligation to open their campuses.

Moreover, the record indicates that the college granted recognition to other student political organizations—Young Americans for Freedom, Young Republicans and Young Democrats (X. P., p. 2). The situation, as Judge Smith's dissent pointed out, is thereby closely analogous to those cases where state school authorities have sought to ban on-campus speakers; the only other court to consider the matter of campus recognition of student organizations found this analogy determinative. *ACLU of Virginia, Inc.* v. *Radford College*, 315 F. Supp. 893, 896-97 (W.D. Va. 1970).

In the speaker cases, the colleges' policies were to permit any speaker to appear on campus except for a very few whose political views were in extreme official disfavor.[8] Both petitioners' case and the speaker-ban cases involve the question of when a university which normally holds

[8] According to Professor Wright, not a single speaker-ban has survived judicial scrutiny. Wright, The Constitution on the Campus, 22 Vand. L. Rev. 1027, 1051-52 (1969).

itself open can forbid people coming together for the purpose of political communication. If one draws any distinction between the cases, the case is stronger for recognition of a student political group than for permitting an outside speaker on campus; if there is any misconduct by the students, the university can more readily discipline or prosecute them than it can a speaker who, after his engagement, may be effectively out of reach.

In the speaker-ban cases, the courts have realized that, in order to place a prior restraint on the exercise of First Amendment freedoms, there must be a showing of a clear and present danger of violence, classroom disruption or some other substantive evil that the college could legitimately forbid. See, *e.g.*, *Brooks* v. *Auburn University*, 296 F. Supp. 188, 197 (M.D. Ala.), *aff'd* 412 F.2d 1171 (5th Cir. 1969); *Stacy* v. *Williams*, 306 F. Supp. 963, 971 (N.D. Miss. 1969) (3-judge court); *Snyder* v. *Board of Trustees of the University of Illinois*, 286 F. Supp. 927, 933 (N.D. Ill. 1968) (3-judge court). In this case, viewed most charitably, respondent James was worried about a threat of violence or disruption of classes on campus; but his fears arose out of the apprehension of something far less than a clear and present danger. All the record can be fairly said to show is that some members of the National SDS organization advocate violence on campus.[9] And the

[9] The only evidence which could be said to reflect on petitioners' motives appears in Hearing Officer's Exhibit O. The following dialogue appears in "a summary of the comments by the [Student Affairs] Committee and S.D.S. representatives:"

* * * *

(3) Q. How would you respond to issues of violence as other S.D.S. chapters have? A. Our action would have to be dependent upon each issue.

(Footnote continued on following page)

state could not forbid those members' "advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Brandenburg* v. *Ohio*, 395 U.S. 444, 447 (1969). Nor should the state be able to forbid any of the petitioners from speaking to a student group—or to each other—on campus on any lesser showing—certainly not on the sole ground that petitioners belong to an organization with the same name as an organization, some of whose members purportedly favor violence.

Both the district court and the court of appeals seemed to feel that the burden lay on petitioners to abjure any relationship with the SDS national and justify their

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(4) Q. Would you use any means possible? A. No, I can't say that; would not know until we know what the issues are.

* * * *

(7) Q. Could you envision the S.D.S. interrupting a class? A. Impossible for me to say.

The answers above are attributed to petitioner Healy and the faculty advisor of CCSC-SDS. The questions were not repeated at the hearing in May, 1970, when petitioners' attorney was present. The answers might raise some suspicions. But to establish a mere possibility of disruption is not enough: the burden on the state is to show a high probability of serious disruption or violence. A vague possibility of disruption in a hypothetical future is a danger neither clear nor present. See *Whitney* v. *California*, 274 U.S. 357, 376 (1927) (Brandeis, J., concurring); *Brandenburg* v. *Ohio*, 395 U.S. 444, 447 (1969) ("imminent lawless action"). The progress of this case speaks most eloquently for the petitioners' inclinations. They have sought, in an orderly manner, first through the procedures of the college, then through those of the courts, to obtain recognition for their organization; in the one instance when college officials ordered them to disband a meeting on campus, they did so without protest. The inkling of suspicion aroused by their perhaps too-candid answers cannot bar petitioners from exercising their First Amendment rights to assemble and speak.

presence on campus, and that, failing an explanation that satisfied respondent James, they might be excluded from campus. First Amendment law, however, is to the contrary: "[a]ny system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity." *Bantam Books, Inc.* v. *Sullivan,* 372 U.S. 58, 70 (1963). And when speech is in the balance, "the State [must] bear the burden of persuasion . . ." that the burden on the exercise of First Amendment rights is justified. *Speiser* v. *Randall,* 357 U.S. 513, 526 (1958). As Judge Smith remarked in dissent, "the burden of providing a justification for this type of prior restraint rests squarely on the shoulders of those who seek to impose it." App. *infra,* p. 38a. The state has totally failed to meet this burden.[10] There is not a scintilla of evidence to indicate that petitioners share any of the views of S.D.S.'s national body. They stated that they will be absolutely independent of the national and that the name was chosen for its publicity value—so that other students would recognize

[10] Not only did the state have the burden before respondent James, but also, in light of *Freedman* v. *Maryland,* 380 U.S. 51 (1965), the burden of convincing the federal district court—or an appropriate state court—that an injunction should issue to enforce respondent James' decision. The teaching of the *Freedman* line of cases is twofold: "that a judicial body, following an adversary hearing, must decide on the protected character of the speech, and that the judicial determination must either precede or immediately follow any governmental action which restricts speech." Monaghan, First Amendment "Due Process," 83 Harv. L. Rev. 518 (1970). Federal courts have already found that *Freedman's* major principles, enunciated in the obscenity area, apply to the functioning of state schools, at both college and secondary school levels. See *Eisner* v. *Stamford Board of Education,* 440 F.2d 803, 810 (2d Cir. 1971); *Snyder* v. *Board of Trustees of the University of Illinois,* 286 F. Supp. 927, 936 (N.D. Ill., 1968) (3-judge court).

their organization as a left-wing student organization. The college introduced no evidence to rebut this testimony; it is simply reasoned that the use of the name must involve an affiliation with the national. There is only the barest suspicion that petitioners themselves intend violence or disruption on campus. One is compelled to conclude that petitioners have been denied the right to organize because the college administration has hoped to keep certain ideas and undesirable elements off-campus.

The bane of the First Amendment is the administrator who makes his decisions on the basis of broad categories and pat labels without considering whether any real or substantial danger is involved. That is the situation here, and it is urgent that this Court make clear that state college administrators, no less than other public officials, must be responsive to the rigid demands of the First Amendment. To limit speech or association, they must identify a substantial, imminent danger on the basis of competent evidence; as Tinker phrased it, "in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression."

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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September 29, 1971

Attorneys for petitioners acknowledge the invaluable assistance of Eugene Z. DuBose, Jr., Harvard Law School 1970, in the preparation of the Petition.

Opinion of the United States Court of Appeals for the Second Circuit

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 733—September Term, 1970.

(Argued March 18, 1971 Decided July 15, 1971.)

Docket No. 35828

CATHERINE J. HEALY, PAUL PETER BROWN, LAWRENCE STUB, JAMES VINCENT CAREY, THEODORE ROBERT LESTOR, JOSEPH A. KNOWLES, EDWARD JOHN O'NEIL and PETER BROWNE,

Plaintiffs-Appellants,

—v.—

F. DON JAMES, Individually and as President of Central Connecticut State College; RICHARD L. JUDD, Individually and as Dean of Student Affairs of Central Connecticut State College; CLETUS CLOW, Individually and as Dean of Administrative Affairs of Central Connecticut State College; BERNICE C. NIEJADLIK, JOHN F. ROBINSON, THOMAS GRASSO, ALVIN B. WOOD, FRANK P. CAMMARANO, CLARK EDWIN CREED, RICHARD GURNEY, JAMES F. MCNALLY, FRANCIS W. HOGAN, JAMES E. DYER, ERNEST A. JOHNSON, LAURA JOHNSON, Individually and as members of the Board of Trustees for the State Colleges of Connecticut,

Defendants-Appellees.

Before:

MOORE and SMITH, *Circuit Judges*, and TIMBERS, *District Judge*.*

Appeal from judgment after hearings in the United States District Court for the District of Connecticut, T. Emmet Clarie, *District Judge*, dismissing complaint which sought to compel defendants to grant official college recognition to a local chapter of SDS on the campus of Central Connecticut State College. Affirmed.

ABRAHAM S. SILVER, of Pudlin & Silver, New Britain, Conn. (Alvin Pudlin, on the brief), *for plaintiffs-appellants.*

F. MICHAEL AHERN, Asst. Atty. Gen. of the State of Connecticut, Hartford, Conn. (Robert K. Killian, Atty. Gen., on the brief), *for defendants-appellees.*

TIMBERS, *District Judge*:

Appellants, eight students at Central Connecticut State College (CCSC), New Britain, Connecticut, appeal from a judgment entered after hearings in the United States District Court for the District of Connecticut, T. Emmet Clarie, *District Judge*, dismissing their complaint which sought declaratory and injunctive relief against the President of the College, the Dean of Student Affairs of the College, the Dean of Administrative Affairs of the College and the members of the Board of Trustees for the State Colleges of Connecticut. 319 F. Supp. 113 (D. Conn. 1970); see also

* Chief Judge of the District of Connecticut, sitting by designation.

311 F. Supp. 1275 (D. Conn. 1970). We hold that the District Court correctly ruled that defendants, in denying official college recognition to a local chapter of Students for a Democratic Society (SDS), did not violate plaintiffs' constitutional rights of freedom of speech, of freedom of assembly or to the equal protection of the laws; that they did not act arbitrarily or capriciously; but that they did act well within "the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools." *Tinker* v. *Des Moines School District,* 393 U.S. 503, 507 (1969); and see *Epperson* v. *Arkansas,* 393 U.S. 97, 104 (1968).

I.

In order more precisely to focus upon the narrow issue here involved, it may be helpful at the outset to make clear what is not involved. Plaintiffs as individuals have not been denied their rights, on or off campus, to speak, to assemble, to petition or to demonstrate. Nor have they been prevented from organizing off campus any group, club, chapter or other collective activity.

What this case does involve is the narrow question whether the President of the College,[1] upon the specific

[1] In addition to the President of the College, the named defendants include the Dean of Student Affairs of the College, the Dean of Administrative Affairs of the College and the members of the Board of Trustees for the State Colleges of Connecticut. It is undisputed that the acts here involved of the President and the Deans were fully known to and approved by the Trustees who are charged by law with the responsibility for policies governing the administration of the College. Conn. Gen. Stat. §§10-109, 10-109(b) (Supp. 1970-71). The Trustees in turn have delegated to the President the power to administer, maintain and supervise the orderly operation of the College. To simplify this opinion, we shall refer only to the acts and conduct of the President and the Deans of the College, with the understanding that their acts and conduct bind all defendants.

record before him, properly acted within his broad discretion and comprehensive authority in denying the college's stamp of approval for a local chapter of SDS as an officially recognized campus organization with its attendant privileges. We hold that he did.

II.

The controlling facts are not in dispute. In large measure they were stipulated.

In view of the District Court's clear and comprehensive findings of fact,[2] we shall summarize only so much of the chronology as is believed necessary to an understanding of our decision below.

(A) *Events Leading Up to District Court's Decision of April 24, 1970.*

In common with most colleges and universities, the faculty of CCSC on May 19, 1969 adopted a "Statement on Rights, Freedoms and Responsibilities of Students."[3]

In September 1969, following publication in the student newspaper of a notice of a meeting to organize at CCSC a local chapter of SDS, plaintiffs met and voted to request the administration to grant official recognition to such a chapter on the campus. They sent to Dean Judd an application containing a written statement of the purposes of the proposed "local chapter of Students for a Democratic Society"; this statement, among other things, disclaimed

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2 *Healy* v. *James*, 311 F. Supp. 1275 (D. Conn. 1970) (jurisdiction retained pending administrative hearing by President James or his designee); 319 F. Supp. 113 (D. Conn. 1970) (summary judgment granted dismissing complaint).

3 In view of the importance to the issues here involved of this "Statement on Rights, Freedoms and Responsibilities of Students," it is set forth in full as an Appendix to this opinion.

that the local SDS chapter would be "under the dictates of any National organization."

Plaintiffs' application on October 2, 1969 was referred to the Student Affairs Committee (also referred to as the Student Personnel Committee) which is an eight member group advisory to the President, consisting of the Dean of Student Affairs, three faculty members and four students. On October 13, 1969, the Student Affairs Committee, by a 6-2 vote, recommended to President James that the local SDS chapter be given official recognition.

On October 30, 1969, President James rejected the recommendation of the Student Affairs Committee and denied official recognition to the local chapter of SDS. His reasons for this action were set forth in a written memorandum,[4] a copy of which was furnished to plaintiffs on October 30.

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4 President James' memorandum of October 30, 1969, insofar as it relates to the proposed local SDS chapter, is as follows:

"I am disapproving recognition of a local chapter of Students for a Democratic Society.

Though I have full appreciation for the action of the Student Affairs Committee and the reasons stated in their minutes for the majority vote recommending approval of a local chapter of Students for a Democratic Society, it is my judgment that the statement of purpose to form a local chapter of Students for a Democratic Society carries full and unmistakable adherence to at least some of the major tenets of the national organization, loose and divided though that organization may be. The published aims and philosophy of the Students for a Democratic Society, which include disruption and violence, are contrary to the approved policy (by faculty, students, and administration) of Central Connecticut State College which states:

'Students do not have the right to invade the privacy of others, to damage the property of others, to disrupt the regular and essential operation of the college, or to interfere with the rights of others.'

The further statement on the request for recognition that 'CCSC Students for a Democratic Society are not under the dictates of any National organization' in no way clarifies why if a group

On November 6, 1969, after President James had denied official recognition to the local SDS chapter, plaintiffs and others met in the Devils' Den of the Student Center, apparently a campus coffee shop under the administration of the college. Upon being informed that this was a meeting of the "CCSC-SDS" and that its purpose was to discuss President James' action of October 30, Dean Judd and Dean Clow notified the group in writing that they could not meet in the Devils' Den or in any other college property "since the CCSC-SDS is not a duly recognized college organization."

Some three and a half months later, the instant lawsuit was commenced by the filing of the complaint on February 24, 1970.[5] Plaintiffs[6] sought declaratory and in-

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intends to follow the established policy of the College, they wish to become a local chapter of an organization which openly repudiates such a policy.

Freedom of speech, academic freedom on the campus, the freedom of establishing an open forum for the exchange of ideas, the freedoms outlined in the Statement on Rights, Freedoms and Responsibilities of Students that 'college students and student organizations shall have the right to examine and discuss all questions of interest to them, to express opinion publicly and privately, and to support causes by orderly means. They may organize public demonstrations and protest gatherings and utilize the right of petition'—these are all precious freedoms that we cherish and are freedoms on which we stand. To approve any organization or individual who joins with an organization which openly repudiates those principles is contrary to those freedoms and to the approved 'Statement on the Rights, Freedoms, and Responsibilities of Students' at Central."

President James' memorandum of October 30 approved recognition of a Commuter Club, a Physical Education Majors Association, a Liberal Party and an Italian Club; each was approved as a campus organization and a faculty adviser was assigned to each.

5. The record is silent as to why plaintiffs, prior to bringing suit, did not avail themselves of their administrative right of appeal as provided in Article III, Section E, of the "Statement on Rights, Freedoms and Responsibilities of Students" (Appendix, p. 4228, *infra*).

junctive relief, the primary thrust of which was to obtain official college recognition of "a chapter of Students for a Democratic Society . . . as a campus student organization."

After the pleadings were closed and a stipulation of facts was filed, Judge Clarie on March 23, 1970 held a hearing on plaintiffs' motion for a preliminary injunction. While the hearing was devoted mainly to marking of exhibits and to arguments of counsel, it was anything but perfunctory. Judge Clarie's questions to counsel on both sides were perceptive and pervasive;[7] they clearly indicated the lines of inquiry he thought should be pursued at the administrative hearing he subsequently ordered.

(B) *District Court's Decision of April 24, 1970.*

On April 24, 1970, Judge Clarie filed a comprehensive 14 page memorandum of decision. 311 F. Supp. 1275. He reviewed the events which led to the lawsuit. He summarized the claims of the parties, noting that plaintiffs did not challenge the constitutionality of the standards established by the college for determining whether campus organizations are to be recognized, but that they did claim as a denial of procedural due process the action of President James, without affording plaintiffs a hearing, in denying their application for official recognition of a local

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"The judicial process shall be such that students have the right to appeal not only disciplinary action deemed unwarranted but also a college regulation or policy considered unjust. The decision of the appeal court shall be final, subject only to the student's appeal to the President of the College or ultimately to the Board of Trustees."

6 Plaintiffs have been represented by retained counsel throughout proceedings in the District Court and in this Court, as well as in the college administrative proceedings referred to below.

7 Transcript of March 23, 1970 Hearing, pp. 1-55.

SDS chapter and particularly in going outside plaintiffs' application and attributing to plaintiffs the aims and purposes of the national organization of SDS which he in turn found to be contrary to the policies of CCSC as set forth in its "Statement of Rights, Freedoms and Responsibilities of Students" (Appendix, pp. 4227-4231, *infra*). In this connection, Judge Clarie pointed out an ambiguity on the face of plaintiffs' application which he suggested should be clarified at an administrative hearing:

> "The ambiguity in this application is patent in that it states that the petitioners wish to become a 'local' chapter of SDS. The term itself, 'local chapter,' strongly infers some kind of affiliation with a more extensive parent organization; yet the application specifically represents that the local group would not be under the dictates of the national organization. The college administration may wish to have this ambiguity clarified and the credibility of the representations ascertained and verified." 311 F. Supp. at 1282.

Then, after a careful analysis of the pertinent authorities, the upshot of Judge Clarie's April 24, 1970 decision was to order that an administrative hearing be held in accordance with the following blueprint (311 F. Supp. at 1282-83):

(1) The hearing was to be held within 30 days.

(2) Reasonable notice was to be given to all parties.

(3) The hearing was to be conducted by either President James "or a hearings officer duly designated by him and acting in his stead."

(4) All plaintiffs were to be afforded an opportunity to be heard.

(5) Cross-examination of witnesses was to be allowed.

(6) A record of the hearing was to be made.

(7) The hearing was to be conducted "in a climate of respectful civility."

(8) Without attempting to restrict the scope of the hearing, the following lines of inquiry were suggested by Judge Clarie:

(a) "The initial question might be whether or not a local unaffiliated chapter of SDS can lawfully exist without being subject to the dictates of the national organization."

(b) "A copy of the organization's charter, by-laws or other similar type of document might be helpful on this point."

(c) "In light of the recent fragmentation of the National SDS, it might also be relevant to know of which faction, if any, this group wishes to become a local chapter."

(d) "Were it to be found to be impossible for a local chapter of SDS to exist without being affiliated with the national parent organization, could the aims and philosophy of the latter group become relevant and important?"

(9) Minutes of the October 2 and October 13, 1969 meetings of the Student Affairs Committee were to be produced.

(10) Judge Clarie directed that President James, after the conclusion of the administrative hearing and upon the overall record, "make his findings as to whether or not the application met the existing

policy standards of the college, which would qualify the applicant club for official campus recognition."

(11) Jurisdiction was retained by the District Court for the entry of such further orders or judgments as might be necessary and appropriate.

(C) *College Administrative Hearing of May 19 and May 25, 1970.*

The administrative hearing ordered by Judge Clarie was held in the CCSC Administration Building in New Britain on May 19 and May 25, 1970. Notice of the hearing was given to and acknowledged by all interested parties, including each individual plaintiff and plaintiffs' retained counsel who was present throughout.

While one of the primary purposes of the hearing was to afford plaintiffs the procedural due process Judge Clarie found had been denied them by President James' action of October 30, 1969 without a hearing, it became quickly apparent at the first session of the hearing on May 19 that the notion of procedural due process entertained by plaintiffs' counsel was quite different from that contemplated by Judge Clarie.

The following are examples, selected at random, of the disruptive tactics resorted to by plaintiffs' counsel at the administrative hearing:

(1) Although Judge Clarie ordered that a record be made of the hearing, plaintiffs' counsel spent two and a half pages of the transcript objecting to the presence of a tape recorder,[8] concluding that "I'm objecting to the use of this device because this de-

8 Transcript of May 19, 1970 Hearing, pp. 5-7.

vice cannot talk back and tell me when it doesn't hear me. . . ." [9]

(2) Despite Judge Clarie's order that the hearing be conducted by either President James "or a hearings officer designated by him," plaintiffs' counsel took up another page of the transcript objecting to President James' absence and his designation of Dean Judd as the hearing officer,[10] stating that "I take the position that the hearing is not properly conducted notwithstanding Judge Clarie's statement." [11] Upon being overruled, plaintiffs' counsel then moved to postpone the hearing and again was overruled.[12]

(3) While Judge Clarie had ordered that "[a]ll of the plaintiffs in this action shall be afforded an opportunity to be heard," plaintiffs' counsel made it clear at the outset that he was going to do the testifying, not the plaintiffs: "Well, as far as I'm concerned, I will make all the remarks that have to be made. I'm not foreclosing any one of my people from speaking, but as far as I'm concerned, I have no reasons for them to make any statements." [13] Of the eight named plaintiffs, only two appeared at the May 19 hearing, one at the May 25 hearing. Plaintiffs' counsel did all the talking. Plaintiffs themselves did not testify at all, with one minor exception.[14]

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9 *Id.* at 7.

10 *Id.* at 7-8.

11 *Id.* at 7.

12 *Id.* at 8.

13 *Id.* at 4.

14 Transcript of May 25, 1970 Hearing, pp. 40-41.

(4) Having effectively sealed off the individual plaintiffs from testifying, plaintiffs' counsel thereupon called President James as a witness on behalf of plaintiffs at the May 25 hearing. Having in mind the purpose of the administrative hearing ordered by Judge Clarie and his directive that President James upon the overall record "make his findings as to whether or not the application met the existing policy standards of the college," plaintiffs' counsel proceeded to ask James questions such as the following:

"Dr. James, you—I withdraw that. Have you already decided this case?" [15]

* * * * * *

"Dr. James, you addressed the Lions Club last week, did you not?" [16]

* * * * * *

"Dr. James, do you intend to offer any evidence in which the creditability of any of these students is under attack?" [17]

(5) After reading to Dr. James the only evidence offered by plaintiffs at the two day hearing—a statement of change of name of plaintiffs' proposed organization from "local chapter of Students for a Democratic Society" to "Students for a Democratic Society of Central Connecticut State College"—plaintiffs' counsel then asked President James:

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15 *Id.* at 26.

16 *Id.* at 27.

17 *Id.* at 30.

"Now, does that statement help you in making a judgment?" [18]

(6) The attempt by plaintiffs' counsel to talk to President James off the record is reflected in the following colloquy: [19]

"Attorney Silver: Yes, could we go off the record? I'd like to talk to Dr. James.

Dean Judd: No, sir.

Attorney Silver: Will the record show that I wanted to talk to Dr. James 'off the record', and I was told that I couldn't do so?

Dean Judd: That request is denied. Dr. James is here as your witness, counselor. We are conducting a hearing; we're not going out of session.

Attorney Silver: I'm outraged!"

Plaintiffs' counsel clearly understood the nature of the proceeding and President James' role therein:

"Well, he's my witness and he's also the person who's going to make the decision in a quasi-judicial proceeding—an administrative proceeding." [20]

(7) Finally, the motivation for calling President James as a witness on behalf of plaintiffs is perhaps best reflected in the following exclamation by plaintiffs' counsel:

"Attorney Silver: This is really terrific." [21]

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18. *Id.* at 29.

19. *Id.* at 32-33.

20. *Id.* at 30.

21. *Id.* at 28.

The only substantive evidence produced by plaintiffs at the two day administrative hearing on May 19 and 25, 1970 was the statement,[22] referred to above, changing the name of plaintiffs' proposed organization to "Students for a Democratic Society of Central Connecticut State College" and reaffirming the disclaimer, set forth in their original statement of purposes, of any connection with the national SDS organization.

Defendants on the other hand, in compliance with the lines of inquiry suggested by Judge Clarie,[23] produced a number of documentary exhibits, briefly summarized as follows:

(1) Notices of the administrative hearing and responses by plaintiffs and their counsel thereto.[24]

(2) Transcripts of Hearings before the Committee On Internal Security of the House of Representatives, 91st Cong., 1st Sess., on June 3-4, 5, 17, July 22, October 28-30, 1969, upon the subject of "Investigation of Students For A Democratic Society" (Georgetown University; Akron, Ohio; Detroit, Mich.; and Pittsburgh, Pa.).[25]

(3) Minutes of the CCSC Student Personnel Committee Meeting of October 2, 1969.[26]

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22 Applicant's Ex. 1.

23 311 F. Supp. at 1282.

24 Exs. B, C, D, E, F, K and M.

25 Exs. G, H, I and N.

26 Ex. O.

The Student Personnel Committee is the same eight member group whose name was changed to the Student Affairs Committee at the October 2, 1969 meeting.

(4) Minutes of the CCSC Student Affairs Committee Meeting of October 13, 1969.[27]

At the October 2, 1969 meeting of the CCSC Student Personnel Committee, referred to above, among the questions asked by the Committee, and the answers given by the SDS representative present, were the following:

"Q. How would you respond to issues of violence as other S.D.S. chapters have?

A. Our action would have to be dependent upon each issue.

Q. Would you use any means possible?

A. No I can't say that; would not know until we know what the issues are.

• • • • •

Q. Could you envision the S.D.S. interrupting a class?

A. Impossible for me to say."

It should be borne in mind that the foregoing questions and answers were included in the very minutes that Judge Clarie suggested be produced at the administrative hearing. Although more than seven months had elapsed between the time this testimony was given by the SDS representative and the time the minutes were marked in evidence at the administrative hearing, significantly *the same SDS representative* who gave the testimony at the October 2, 1969 meeting was the *one plaintiff* present at the May 25, 1970 administrative hearing, viz. Miss Catherine Healy. Although accompanied by counsel, she sat silently by when her previous testimony was received in evidence.

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27 Ex. P.

Indeed, sitting silently by was just about all that any of the plaintiffs present at either the May 19 or the May 25 hearing did or were permitted to do by their counsel. And although plaintiffs' counsel purported to be their spokesman, he repeatedly refused either to respond himself to questions put by the hearing officer or to permit plaintiffs to respond. Such intransigence was demonstrated over and over again in response to questions by the hearing officer directed to the exhibits and to the precise lines of inquiry suggested by Judge Clarie.[28] One example is the following response by plaintiffs' counsel to a question by the hearing officer:

> "Dean Judd: All right. A question—an additional question, then, Attorney Silver—is, we would like to know why the applying organization wishes to use a name of an existing national organization if it will have no attachment or affiliation with it?
>
> Attorney Silver: Well, I didn't participate in the selection of name, but the word 'democracy' sounds pretty good to me. It always has been a good word."[29]

(D) *President James' Decision of July 10, 1970.*

On July 10, 1970, President James again denied plaintiffs' application for official recognition as a campus organization. His decision was set forth in a letter to the Dean of Student Affairs, a copy of which was furnished to plaintiffs.

After summarizing the record of administrative proceedings before the hearing officer, including specific references to questions asked by the hearing officer and exhibits

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28 Transcript of May 25, 1970 Hearing, pp. 37-41.

29 *Id.* at 38-39.

received in evidence, President James stated his reasons for denying the application:

(1) Failure of plaintiffs "to resolve a significant question which the College sought to clarify," namely, "what is the nature of affiliation or association of the applying group?" and, specifically, "[i]f the group utilizes the name of an existing organization, how can it 'not be under the dictates of any organization' as the applying group stated?"

(2) Article III of the national constitution of SDS[30] provides that independent groups which may affiliate as associates "are expected to operate within the broad terms of policies set by the national convention and the national council."

(3) The documentary exhibits received in evidence, absent any disclaimer by plaintiffs of intent to resort to similar disruption or violence,[31] indicated that plaintiffs' prospective campus activities were likely to cause a disruptive influence at CCSC.

President James concluded as follows:

"Accordingly, in view of the documentary evidence filed by the Hearing Officer, and the intransigence of counsel for the applicants, I reaffirm my earlier decision to deny recognition to the applying group. Recognition of such group, in my judgment, would be contrary to the orderly process of change and would be contrary to the philosophy and lawful mission of this College."

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30 Ex. G, p. 2107.

31 Exs. O and P. See p. 4215, *supra*.

(E) *District Court's Decision of October 29, 1970.*

Upon receipt of President James' decision of July 10, plaintiffs filed in the District Court a motion to reject James' findings and to grant the injunctive relief sought in the complaint. Judge Clarie held a further hearing on September 28, 1970, at which time he heard further arguments of counsel.

On October 29, 1970, Judge Clarie filed a further 10 page memorandum of decision. 319 F. Supp. 113. In view of the absence of any material issues of fact, he treated the record before him as though cross-motions for summary judgment had been filed and proceeded to determine the question of law thus presented. Rule 56, Fed. R. Civ. P.

He reviewed the prior proceedings, particularly the administrative hearing he had ordered. He analyzed the additional evidence presented and President James' decision of July 10.

The essence of Judge Clarie's decision of October 29 was that plaintiffs had not met their burden of complying with the standard established by the college's "Statement on Rights, Freedoms and Responsibilities of Students"; that until they did so, they had no constitutional or other right to have the college's stamp of approval conferred upon their organization; and that President James' discretionary action in denying the application, upon the specific record before him, could not properly be magnified into an interference with constitutionally protected rights.

Judge Clarie succinctly summarized his conclusion as follows:

> "The opportunity of an open dialogue, with a free, uninhibited but respectful expression of ideas between teacher and student, scholar and scholar, with its at-

tendant critical exchange exposed to full view, creates the epitome of the college students' never ending search for truth. This autonomy of intellectual freedom of academic expression has not been materially deterred or lessened by the College President's action. He is held responsible for the climate of campus discipline. To be effective in carrying out his responsibilities, he must be afforded broad discretionary authority with which to achieve it." 319 F. Supp. at 116.

III.

We believe that the foregoing recital of events from the spring of 1969 through the fall of 1970—including the words and actions of the parties themselves—compel but one decision in this case.

We start with the premise that "for good or ill, the Constitution has come to the campus." Wright, *The Constitution on the Campus,* 22 Vand. L. Rev. 1027, 1033 (1969). And we yield to none in our profound belief that the full panoply of constitutional rights, duties, privileges and immunities should be fully implemented on every campus, whether of a public or private college, the campus being "undoubtedly a 'marketplace of ideas.'" *Eisner* v. *Stamford Board of Education,* 440 F.2d 803, 807 and 808 n. 5 (2 Cir. 1971).

In order that there be full implementation of the Constitution on the campus, all constituencies must be active and willing participants; that includes administration, faculty, students and, occasionally, alumni as well. In short, to be effective, there must be a free flow of rights and responsibilities on the part of all concerned before life under the Constitution on the campus can have meaning.

Here, as the record makes painfully clear, the fountain was poisoned before it began to flow.

Despite the concededly valid college policy governing the constitutional rights, freedoms and responsibilities of students at CCSC,[32] plaintiffs failed to avail themselves of the procedural due process accorded to them and thus prevented the President of the College and the administration from applying that policy to plaintiffs' application so as to implement the undoubted authority of the college officials to control student conduct, consistent with fundamental constitutional safeguards.[33]

Specifically, although Judge Clarie and the college administration made clear the information required of plaintiffs, they failed to comply in at least the following essential respects:

(1) They failed to submit a copy of their charter or by-laws.[34]

(2) They failed candidly to clarify the apparent conflict between the name of their proposed organization, "Students for a Democratic Society of Central Connecticut State College," and their disclaimer of be-

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32 "Statement on Rights, Freedoms and Responsibilities of Students," set forth as an Appendix, *infra*.

As we recently held in *Eisner* v. *Stamford Board of Education*, 440 F.2d 803, 808 (2 Cir. 1971), "to the extent that the Board's policy statement here merely vests school officials under state law with authority which under *Tinker* [393 U.S. 503, 507 (1969)] they may constitutionally exercise, it is on its face unexceptionable."

33 *Tinker* v. *Des Moines School District*, 393 U.S. 503, 507 (1969); *Eisner* v. *Stamford Board of Education*, *supra* note 32, at 807.

34 Three other campus organizations (the Commuter Club, the Physical Education Majors Association and the Liberal Party), *supra* note 4, which were approved by President James in his memorandum of October 30, 1969 (simultaneously with his disapproval of the local chapter of SDS) did submit copies of their constitutions.

ing under the dictates of the national SDS organization.[35]

(3) They failed candidly to respond to inquiries whether they would resort to violence and disruption on the CCSC campus, including interruption of classes.[36]

(4) They failed to testify at the administrative hearing and to subject themselves to cross-examination, despite Judge Clarie's explicit direction.[37]

(5) They failed to offer any evidence whatsoever at the administrative hearing designed to enable the college administration and Judge Clarie to resolve the issues for which the hearing was ordered; but, on the contrary, they sanctioned conduct at the hearing just the opposite of the "climate of respectful civility" ordered by Judge Clarie.[38]

Upon this record, Judge Clarie held that plaintiffs had not met their burden of complying with the standard established by the college for recognition of campus organizations; that until they did so, they had no constitutional or other right to claim the college's stamp of approval upon their organization; and that the discretionary action of President James in denying their application could not be blown up into an interference with constitutionally protected rights. 319 F. Supp. at 116-17. We agree.

We wish to emphasize the narrow ground of our decision as stated. And we especially emphasize that we find it

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35 *Supra*, pp. 4216, 4217.

36 *Supra*, p. 4215.

37 *Supra*, p. 4208.

38 *Supra*, pp. 4210-4213; 4208-4209.

neither necessary nor appropriate, upon this record, to reach the substantive constitutional questions[39] which might have been presented if plaintiffs had availed themselves of the procedural due process to which Judge Clarie or-

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39 While we do not find it necessary or appropriate to reach, for example, the questions whether the national SDS organization was prone to violence and, if so, whether denial of recognition to plaintiffs' local organization—identified by name with the national—violated plaintiffs' constitutional right of assembly, it is clear, in view of the record (Exs. G, H, I and N; *supra*, page 15), that President James and the college administration were fully justified in inquiring into the relationship between the national SDS organization and a proposed local organization bearing the SDS label. For there is little doubt that during the period here involved, and immediately prior thereto, the SDS had engaged in campus violence and disruption. See *Cole* v. *Trustees of Columbia University*, 300 F. Supp. 1026, 1028 (S.D.N.Y. 1969). And for its bearing upon the *reasonableness* of the inquiries by President James and Judge Clarie into the relationship between plaintiffs' proposed local SDS organization and the national SDS organization, see Address by Hon. Jerris Leonard, Assistant Attorney General of the United States, at Conference of Association of Governing Boards, St. Louis, Mo., on October 6, 1970:

> "In the first half of the 1967-68 academic year, 71 demonstrations were reported on 62 campuses across the nation. In the second half of that same year, 221 demonstrations took place on 101 campuses.
>
> A jarring 850 demonstrations were reported the following academic year, 1968-69, resulting in over 4,000 arrests, 125 student injuries and 1 death. Arson attempts or successful arson incidents numbered 61.
>
> In this past year, 1969-70, these already shocking numbers nearly doubled: 1,785 demonstrations were reported on campuses across the United States, causing some 462 injuries and 8 deaths; 7,200 arrests were made; 246 arson incidents or attempts, and 14 bombings.
>
> In the two-week period following the invasion of Cambodia, the incidents of violence, injury, arrests, and number of demonstrations were greater than in the entire preceding period of that academic year."

The *reasonableness* of the inquiries made by President James in a nationwide campus atmosphere of ticking timebombs can hardly be open to serious question. See *Schenck* v. *United States*, 249 U.S. 47, 52 (1919).

dered they were entitled and which the college administration accorded them.[40]

We hold in short that, upon the specific record before him, President James properly acted within "the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools." *Tinker* v. *Des Moines School District, supra* note 33, at 507; *Eisner* v. *Stamford Board of Education, supra* note 32, at 807.

As applied to a college, this rule, which is the ground of our decision, has been well stated in *Esteban* v. *Central Missouri State College*, 415 F.2d 1077, 1089 (8 Cir. 1969) (Blackmun, *J.*):

> "We . . . hold that a college has the inherent power to promulgate rules and regulations; that it has the inherent power properly to discipline; that it has power appropriately to protect itself and its property; that it may expect that its students adhere to generally accepted standards of conduct."

Affirmed.

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40 Questions of constitutional law should not be decided unless absolutely necessary to a decision in the case and certainly not upon a record, as here, which does not adequately raise a constitutional issue. *Ashwander* v. *Tennessee Valley Authority*, 297 U.S. 288, 346-47 (1936) (Brandeis, *J.*, concurring). And see *Welsh* v. *United States*, 398 U.S. 333, 354-56 (1970) (Harlan, *J.*, concurring); *Chandler* v. *Judicial Council*, 398 U.S. 74, 92 (1970) (Harlan, *J.*, concurring); *Dandridge* v. *Williams*, 397 U.S. 471, 475-76 (1970); *Zschernig* v. *Miller*, 389 U.S. 429, 444-45 (1968) (Harlan, *J.*, concurring). See also *Tenneco, Inc.* v. *Greater LaFourche Port Commission*, 427 F.2d 1061, 1065 (5 Cir. 1970); *State of Texas* v. *Grundstrom*, 404 F.2d 644, 648-49 (5 Cir. 1968); *Bauers* v. *Heisel*, 361 F.2d 581, 588 (3 Cir. 1966).

APPENDIX

Central Connecticut State College
New Britain, Connecticut

STATEMENT ON RIGHTS, FREEDOMS AND RESPONSIBILITIES OF STUDENTS

Preamble

Academic institutions exist for the transmission of knowledge, the pursuit of truth, the development of students and the general well-being of society. In line with this purpose, the college has the duty to protect the indispensable freedoms of inquiry and expression and furthermore has the responsibility to encourage all of its members in developing the capacity for critical judgment in their sustained and independent search for truth.

The formulation of detailed procedures for securing the student's freedom to learn is the responsibility of each institution and must be in harmony with the educational purpose of the institution and will vary from campus to campus. The most basic concept of order or government is expressed as policy in order to allow a community to carry out its functions. The responsibility for such government becomes the responsibility of each individual in that community.

I. In the Classroom

A. *Right to Freedom of Expression*

Each student is free to take reasoned and reasonable exception—without interference—to data and views presented in any course and free from arbitrary dis-

missal from that course. It shall be understood that part of any course content may involve development of the ability to express scholarly opinions. It shall also involve development of motivation to learn, guidance in independent study and encouragement of the student to develop his fullest potential. The student's responsibility is to exercise his freedom of expression within orderly procedures consistent with the situation and in a manner that reflects thought, scholarly analysis and knowledge of the course material.

B. *Right to Adequate Instruction*

Each student has the right to be instructed by a professor who presents course material relevant to his discipline and maintains established standards for academic performance. Moreover, each student has a right to professors who are adequately prepared for class and accessible for individual conferences. It is the responsibility of the student to profit from adequate instruction, seeking individual help when needed and preparing before class so that he may fully understand the nature of the material presented.

C. *Right to Proper Academic Evaluation*

Each student has the right to be evaluated entirely upon the basis of his academic performance and not on opinion or conduct or matters not related to academic standards. This right shall be guaranteed by orderly, clearly defined procedures. Each student has the right to see and have explained to him evaluated material so that he can know his strong and weak points. It is the student's responsibility to know the basis for evaluation and to understand the procedures.

II. Student Records and Disclosure

A. Institutions shall have a carefully considered policy as to the information which should be a part of a student's permanent educational record and as to the conditions of its disclosure. To minimize the risk of improper disclosure, academic and disciplinary records shall be separate and the conditions of access to each shall be set forth in an explicit policy statement. Transcripts of academic records shall contain only information about academic status. Data from academic, disciplinary, and counseling files shall not be available to unauthorized persons on campus or to any person off campus without the express consent of the student involved except under legal compulsion.

B. Academic records and recommendations are permanently on file at the college. No records shall be kept which reflect the political activities or political beliefs of students. Provision shall also be made for routine destruction of disciplinary records after seven years from graduation. Administrative staff and student personnel officers shall respect confidential information about students which they acquire in the course of their work.

C. Disciplinary records of students who leave the college without graduating may be saved for no more than seven years for reference in the event a student applies for reentry to the institution.

D. Information about student views, beliefs, and political associations which professors acquire in the course of their work as instructors, advisors, and counselors should be considered confidential. Protection against improper disclosure is a serious professional obligation.

Judgments of ability and character may be provided under appropriate circumstances, normally with the knowledge or consent of the student.

III. Rights and Obligations Relating to Due Process

A. Except for reasons related to the physical or emotional safety of students, faculty, or college property, college sanctions against individuals accused of violations of college regulations, local, state or federal laws shall not be applied until the individual is convicted of such violation.

B. The college shall define its own regulations as clearly as possible and publish them in a form which is readily accessible to all students. It is the responsibility of the student to familiarize himself with regulations of the college. The jurisdiction of faculty or student judicial boards, the disciplinary responsibilities of college officials and the legal disciplinary procedures, including the students' right to appeal a decision, shall be clearly formulated and communicated in advance. The student shall be as free as possible from imposed limitations that have no direct relevance to his education.

C. An individual accused of a breach of college regulations shall be informed of his rights by a college official and presumed innocent until proven guilty. The accusing party shall have the burden of proving such guilt. No form of harassment shall be used by institutional representatives to coerce admissions of guilt or information about conduct of other suspected persons.

D. Except under emergency circumstances, premises occupied by students and the personal possessions of stu-

dents shall not be searched unless appropriate authorization has been obtained. For premises such as residence halls controlled by the institution, an appropriate and responsible authority shall be designated to whom written application shall be made before a search is conducted. The application shall specify the reasons for the search and the objects or information sought. The student shall be present, if possible, during the search. For premises not controlled by the institution, the ordinary requirements for lawful search shall be followed.

E. The college has the responsibility for establishing adequate judicial procedures for students accused of infractions. The accused has the right to challenge the impartiality of the judicial agent. The judicial process shall be such that students have the right to appeal not only disciplinary action deemed unwarranted but also a college regulation or policy considered unjust. The decision of the appeal court shall be final, subject only to the student's appeal to the President of the College or ultimately to the Board of Trustees.

F. A student accused of violating college regulations has the right to seek the aid of any member of the college community to aid in his defense.

G. Sanctions shall be fairly and impartially applied and not in violation of the student's right to proper academic evaluation.

IV. Off-Campus Freedom of Students

A. Exercise of Rights of Citizenship—College students are both citizens and members of the academic community. As citizens, students shall enjoy the same freedom of speech, peaceful assembly, and right of petition that

other citizens enjoy and, as members of the college community, they are subject to the obligations which accrue to them by virtue of this membership. Faculty members and administrative officials shall insure that institutional powers are not employed to inhibit such intellectual and personal development of students as is often promoted by their exercise of the rights of citizenship both on and off campus.

B. Activities of students may upon occasion result in violation of law. In such cases, college officials shall be prepared to apprise students of sources of legal counsel and may offer other assistance. Students who violate the law may incur penalties prescribed by civil authorities, but college authority shall never be used merely to duplicate the function of civil laws. Only where the college's interests as an academic community are distinct and clearly involved shall the special authority of the college be asserted. The student who incidentally violates college regulations in the course of his off-campus activity, such as those relating to class attendance, shall be subject to no greater penalty than would normally be imposed. College action shall be independent of community pressure.

V. On Campus Freedom of Students

If the individual rights of a student are to be preserved, certain standards must be maintained in student affairs.

A. Care shall be taken in the establishment and organization of campus groups so that the basic rights, freedoms and responsibilities of students will be preserved.

B. Student organizations shall submit a clear statement of purpose, criteria for membership, rules of procedures and a list of officers as a condition of institutional recog-

nition. They shall not be required to submit a membership list as a condition of institutional recognition.

C. Membership in campus organizations shall be limited to matriculated students (day or evening) at the college. Membership shall not be restricted by race, religion or nationality. The members shall have sole power to determine organization policy consistent with the regulations of the college.

D. Each organization is free to choose its own adviser. Advisers to organizations shall advise but not control the organizations and their policies.

E. College students and student organizations shall have the right to examine and discuss all questions of interest to them, to express opinion publicly and privately, and to support causes by orderly means. They may organize public demonstrations and protest gatherings and utilize the right of petition. Students do not have the right to deprive others of the opportunity to speak or be heard, to invade the privacy of others, to damage the property of others, to disrupt the regular and essential operation of the college, or to interfere with the rights of others.

F. Through the student government organization, college policy committees, or other accepted college procedures, students shall have the right of and responsibility for participating in the formulation and application of college policy. The role of the student government and both its general and specific responsibilities shall be made explicit, and the actions of the student government within the areas of its jurisdiction shall be reviewed only through orderly and prescribed procedures. The procedure for determining college policy

shall be clearly defined and made accessible to students in written form.

G. Students shall be allowed to invite and to hear any person of their own choosing. Those routine procedures required by a college before a guest speaker is invited to appear on campus shall be designed only to insure that there is orderly scheduling of facilities and adequate preparation for the event, and that the occasion is conducted in a manner appropriate to an academic community. The college control of campus facilities shall not be used as a device of censorship. It shall be made clear to the academic and larger community that sponsorship of guest speakers does not necessarily imply approval or endorsement of the views expressed, either by the sponsoring group or the institution.

H. Student publications and the student press are a valuable vehicle in establishing and maintaining an atmosphere of free and responsible discussion and of intellectual exploration on the campus. They are a means of bringing student concerns to the attention of the faculty and the institutional authorities and of formulating student opinion on various issues on the campus and in the world at large.

Institutional authorities, in consultation with students and faculty, have a responsibility to provide written clarification of the role of the student publications, the standards to be used in their evaluation, and the limitations on external control of their operation. At the same time, the editorial freedom of student editors and managers entails corollary responsibilities to be governed by the canons of responsible journalism, such as the avoidance of libel, indecency, undocumented al-

legations, attacks on personal integrity, and the techniques of harassment and innuendo. As safeguards for the editorial freedom of student publications, the following provisions are necessary:

1. Student publications and student press shall be free of censorship and advance approval of copy. Its editors and managers shall be free to develop their own editorial policies and news coverage.

2. Editors and managers of student publications and the student press shall be protected from arbitrary suspension and removal because of student, faculty, administrative, or public disapproval of editorial policy and content.

3. The Editorial Board responsible for the appointment of editors and managers shall be the agency responsible for their removal. An Ad Hoc Publication Board, composed of and elected by students, shall have ultimate jurisdiction over all student publications if and when questions of responsible journalism arise.

4. All college published and financed student publications shall explicitly state on the editorial page that the opinions there expressed are not necessarily those of the college or student body.

The above statement was approved by the faculty May 19, 1969.

SMITH, *Circuit Judge* (dissenting):

I respectfully dissent.

In September, 1969 a notice appeared in the school newspaper of Central Connecticut State College announcing an

organizational meeting of a local chapter of the Students for a Democratic Society. At this meeting officers were elected and those present voted to request the administration of the College to grant official recognition to the organization. On September 17, 1969 the students involved submitted a written memorandum setting forth the purposes and goals of the group to the Dean of Students as required by the College's regulations.

What follows is a brief statement of purpose of the group of students at CCSC who would like to form a local chapter of Students for a Democratic Society:

(1) Because the university is intended to be the arena of education, where there is an unfettered exchange of ideas, SDS would provide a forum of discussion and self-education for students developing an analysis of American society and institutions, including higher education, and the world situation in general.

(2) Because it is felt that ideas without parallel in deeds are empty and ephemeral, and that no area of life exists in a vacuum and unrelated to all other areas of life, SDS would provide an agency for integrating thought with action so as to bring about constructive changes in the university, in American life, and [in] the world.

(3) Because of the responsibility of all peoples for the welfare of others, SDS would provide a coordinating body for relating the problems of leftists students and other groups, such as the student body as a whole, the working class, the black populace or whatever other individuals or groups in fact or potentially in accord with the purposes of the CCSC chapter of SDS.

Officers: Lawrence Stub, Frank Siccardi. Procedures: (1) meetings once a week. (2) membership completely open to students and faculty. (3) voluntary dues. (4) elections held regularly. (5) CCSC Students for a Democratic Society are not under the dictates of any National organization.

As the majority opinion relates, after a long series of hearings lasting over some months, the application was finally rejected by the President of the College in May, 1970.

Before examining the important first amendment issues raised by this case, we should be clear as to the precise consequences of the appellee's actions now approved by this court. Contrary to the repeated assertions in the majority's opinion, this is not a situation where the question is merely whether or not the students will receive "official" recognition for their organization. The record clearly shows that what is at issue is whether these students will be permitted to use the buildings and grounds of the campus to conduct meetings and discussions and is thus analogous to an attempt by the authorities to prevent a particular group or individual from speaking on the school premises.[1] The constitutional problems which this action presents are clearly, therefore, of consequence.

We may well begin with *Tinker* v. *Des Moines Independent Community School District*, 393 U.S. 503 (1969). There the three petitioners, ranging in age from thirteen to sixteen, protested the Viet Nam war by wearing black armbands to school in defiance of a ban on armbands adopted two days earlier by school officials in anticipation of the protest. The petitioners then brought an action pursuant

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1 As noted in the majority opinion, the appellees attempted to prevent the students from meeting in the school cafeteria.

to 42 U.S.C. §1983 seeking to enjoin on first amendment grounds further discipline of the students for violating the no-armband rule. The Court found for the students holding that their "silent, passive expression of opinion" was an exercise of "primary First Amendment rights" which could be prevented only upon a showing that engaging in this conduct "would materially and substantially interfere with the requirements of appropriate discipline in the operation of the school." [2]

The holding in *Tinker* articulated for the first time a broad educational philosophy based on the first amendment.[3] The Court quoted at length from *Keyishian* v. *Board of Regents*, 385 U.S. 589, 603 (1967), where it had struck down a loyalty oath required of all state teachers:

> The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools. [Citations omitted.] The classroom is peculiarly the marketplace of ideas. The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth "out of a multitude of tongues [rather] than through any kind of authoritative selection."

School authorities may never merely suppress "feelings with which they do not wish to contend," nor may they treat students as "closed-circuit recipients" of the dominant views of the community. The Court emphasized that per-

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2 See, *Burnside* v. *Byars*, 363 F.2d 744 (5 Cir. 1966).

3 Since Tinker was concerned with high school students where the Court has held, in other contexts, that first amendment rights may be more limited (cf. *Ginsberg* v. *New York*, 390 U.S. 629 (1968)), it follows *a fortiori* that the scope of first amendment rights guaranteed to college students is at least as great as those accorded to persons of a more tender age. The average college student is more than 21 years old. *Soglin* v. *Kauffman*, 295 F. Supp. 978, 988 (W.D. Wisc., 1968).

sonal communication among students outside the classroom is one of the activities to which the schools are dedicated. Noting that the exercise of fundamental freedoms often entails risk, the Court said a school may not silence its students simply "to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint." "In short, the Court adopted the view that the process of education in a democracy must be democratic."[4]

It is perhaps arguable that a college or university might deny the use of its facilities to any political organization, although the courts have in recent years greatly expanded the exercise of first amendment rights on other types of public or even privately owned premises.[5] The record below, however, indicates that the College granted recognition, and thus the use of its facilities, to other political groups and organizations. Once approval has been granted to some, it cannot be denied to others "according to orthodoxy or the popularity of their political or social views," for to do so would be "blatant political censorship."[6]

There are apparently no reported cases in the federal courts dealing with the precise issue raised here.[7] As noted above, the closest analogy would appear to be those cases

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4 Michelman, "The Supreme Court, 1968 Term," 83 HARV. L. REV. 1, 159 (1969).

5 *Edwards* v. *South Carolina*, 372 U.S. 229 (1963) (grounds of the state capital); *Niemotko* v. *Maryland*, 340 U.S. 268 (1951) (park); *Marsh* v. *Alabama*, 326 U.S. 501 (1946) (company town); *Amalgamated Food Employees* v. *Logan Valley Plaza, Inc.*, 391 U.S. 308 (1968). See, Note, "Regulation of Demonstrations," 80 HARV. L. REV. 1773 (1967).

6 *Brooks* v. *Auburn University*, 296 F. Supp. 188, 194 (M.D. Ala., 1969).

7 In *Saxton* v. *Board of Regents*, No. 123-165, Cir. Ct. Dane County, Wisconsin, May 21, 1968 (unreported), a state trial court upheld the denial of official recognition of an SDS chapter.

involving attempts to prevent a particular speaker from appearing on the campus. As Professor Wright has pointed out, there is not a single reported case in recent years where a speaker-ban has been upheld.[8]

The actions of the appellees do, by their very nature, constitute a "prior restraint" upon the freedom of speech and assembly. As the Court noted in *Bantam Books, Inc.* v. *Sullivan*, 372 U.S. 58, 70 (1963): "Any system of prior restraints of expression comes to this Court with a heavy presumption against its constitutional validity." [Cf. *Near* v. *Minnesota*, 283 U.S. 697 (1931); *Organization for a Better Austin* v. *Keefe*, 39 U.S.L.W. 4577 (1971); *New York Times* v. *United States*, —— U.S.L.W. —— (1971).] In order to withstand constitutional attack, prior restraints must be narrowly drawn so as to suppress speech or assembly which presents a "clear and present danger" of a substantial evil. *Schenck* v. *United States*, 249 U.S. 47 (1919); *Cantwell* v. *Connecticut*, 310 U.S. 296 (1940); *Den-*

8. "A speaker cannot be refused permission to speak on campus because he has been convicted of a felony [*Brooks* v. *Auburn University* (*supra*)] or is under indictment for murder [*Student Liberal Federation* v. *Louisiana State University*, Civ. No. 69-300, E.D. La., Feb. 15, 1968 (unreported)] or because he urges or advocates violation of the laws [*Brooks* v. *Auburn University* (*supra*)] or because he is an admitted member of the Communist Party. [*Egan* v. *Moore*, 245 N.Y.S.2d 622 (1963), *aff'd* 250 N.Y.S.2d 809 (1964).] A speaker may not be required to promise that he will not use his speech to publicize the activities of any 'subversive, seditious, and un-American organization.' [*Snyder* v. *Board of Trustees*, 286 F. Supp. 927 (N.D. Ill., 1968).] A forum cannot be constitutionally denied to 'subversive elements' [*Danskin* v. *San Diego Unified School District*, 28 Cal.2d 536 (1946)] nor even to groups seeking overthrow of the government by force and violence [*A. C. L. U.* v. *Board of Education*, 55 Cal.2d 167 (1961)]. It will not do to limit speakers to those who 'clearly serve the advantage of education' or to lease the auditorium only for programs 'determined to be compatible with the aims of [the college] as an institution of higher learning.' [*Dickson* v. *Sitterson*, 280 F. Supp. 486 (M.D.N.C., 1968).]" Wright, "The Constitution on the Campus," 22 VAND. L. REV. 1027, 1051, 1052 (1969).

nis v. *United States,* 341 U.S. 494 (1950), or at least in the present context, the likelihood that it would "materially and substantially disrupt the work and discipline of the school." *Tinker* v. *Des Moines Independent Community School District* (*supra* at 513). Contrary to the position taken by the majority, it appears to me to have been established beyond doubt that the burden of providing a justification for this type of prior restraint rests squarely on the shoulders of those who seek to impose it. The appellees have not come forward with any evidence as to a threat of substantial disruption of the operation of the school by the appellants.

When the College President rejected the approval by the Student Affairs Committee of the applicants as a local chapter under the SDS label as an approved campus club, the applicants were effectively denied freedom of on-campus association and speech. It is true, as the majority makes plain, that the applicants' counsel did try the patience of Dean Judd as hearing officer, but this is not sufficient ground for denying them the right to be heard on campus.

Of course, if these applicants took part in violent or disruptive activities they would be subject to collegiate discipline as well as criminal prosecution, and any recognition could be withdrawn for cause. The record, however, shows no such activity, but only a fear of some such possibility, based on activities of others in other places at other times, and on the suspect "philosophy" of the applicants.

Those charged with the governance of our educational institutions have in recent years been under increasing pressure from forces now at work on the fabric of American society. These conflicting demands have been particularly intense in the state college and university systems

where administrators are directly responsible to the political process. Yet one would hope that educators would be among the first to recognize how essential it is in such periods of stress to hold fast to the rule of law. If support for basic constitutional liberties is weakened on the nation's campuses, they will not long maintain their viability in society as a whole. Misguided, immature, unpopular groups, such as this may be, provide the acid test of the genuineness and strength of our freedoms. The instincts and action of the Student Affairs Committee were quite in accord with our constitutional principles, and might better have been adopted on review.

I would, therefore, reverse and remand the case to the district court with instructions to grant the injunctive relief sought by appellants.

Opinion of the United States District Court, District of Connecticut

UNITED STATES DISTRICT COURT

D. CONNECTICUT

Oct. 29, 1970

Civ. A. No. 13721

CATHERINE J. HEALY *et al.*,

Plaintiffs,

—v.—

F. DON JAMES *et al.*,

Defendants.

Alvin Pudlin, Abraham S. Silver, Pudlin & Silver, New Britain, Conn., for plaintiffs.

F. Michael Ahern, Asst. Atty. Gen., State of Conn., Hartford, Conn., for defendants.

RULING ON MOTION TO REJECT FINDINGS AND SUMMARY JUDGMENT

CLARIE, District Judge.

Jurisdiction in Healy v. James, 311 F.Supp. 1275 (D. Conn. 1970), was retained by this Court and an evidentiary hearing ordered on plaintiffs' application requesting official campus recognition of a local chapter of the Students for a Democratic Society (SDS). The purpose of said hearing

was to hear evidence and ascertain whether or not the proposed group had among its aims and purposes the philosophy of violent activism.

The College President appointed Richard L. Judd, Dean of Student Affairs, as his representative hearings officer to carry out the Court's order, so that the applicants would be afforded a hearing. After due notice to the parties, evidentiary hearings were had on May 19th and May 25th, 1970, respectively. Two of the original applicants accompanied by retained counsel and several interested persons attended these hearings. Exhibits were filed by the petitioners and the respondents, testimony was offered, arguments of counsel presented and a complete verbatim transcript of these proceedings was made.

After having reviewed this transcript of the evidence as well as the exhibits, President James filed his decision on July 10, 1970, in which he reaffirmed his earlier findings and denied official college recognition to the proposed SDS chapter, together with his reasons for these conclusions. After a copy of that decision had been received by plaintiffs' counsel, the plaintiffs moved that this Court reject the findings of President James and grant the equitable relief which the plaintiffs had originally sought. Their proposed remedy would have afforded them the right to form a local chapter of the SDS at Central Connecticut State College (CCSC) with official campus recognition by the college administration. The Court will treat the pending motion, as if cross-motions for summary judgment had been filed by the parties; and it finds that the plaintiffs' constitutional claims are without merit, accordingly it denies their prayer for equitable relief and orders a dismissal of the action.

The court-ordered administrative hearing added some elements of factual substance to the plaintiffs' original ap-

plication. Certainly, the formal requisites of administrative procedural due process have now been met. Both parties had the opportunity to supplement and complete the prior record,[1] not only on the issue of whether the local chapter of SDS was affiliated with the national organization, but also offered an opportunity for the college administration to place in evidence factual support for the conclusions which President James found, and which he claims warranted his denial of plaintiffs' application. The plaintiffs' supplemental evidence consisted primarily of one written "statement," Plaintiffs' Exhibit #1, purporting to change that part of the name of the applicant organization, which originally referred to itself as a local chapter of the SDS and to reaffirm its alleged unaffiliated status. The relevant part stated:

> "(T)hat the proposed organization shall be called Students for a Democratic Society of Central Connecticut State College, and it shall have no connection whatsoever to the structure of an existing national organization, or organizations, bearing the name Students for a Democratic Society. Furthermore, the organization shall be unaffiliated with any other organization."

The hearings officer offered *sua sponte* several exhibits[2] disclosing the historical sequence in the processing of the application, and several Congressional hearings' transcripts of testimony under oath, which pertained to the inherent nature of the national SDS organization. These latter documents reviewed the history of the national organiza-

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[1] Defendants' Exhibit "I".

[2] Hearings Officer's Exhibits "G", "H", "I" and "N".

tion's turbulent and violent activities on other campuses, as well as its openly declared anarchistic objectives, both political and social. A complete transcript of the hearings officer's report, together with all the exhibits have been filed with this Court.

The Student Affairs Committee initially received on October 2, 1969 the petitioners' application requesting official campus approval. This committee composed of the Dean of Students, four faculty members and three students, had been delegated with the power to "recommend for faculty approval the policies and procedures for the establishment and recognition of all clubs, groups and organizations at the college."[3]

The committee's authority was specifically limited however, by the Board of Trustees, through a general policy statement governing the function and responsibilities of such groups. This limitation provided:

> "The President of the College, having the ultimate responsibility for the operation of the college, shall have veto power concerning all policy recommendations. All Faculty Senate and Departmental appointments to committees are subject to the approval of the President."[4]

Thus, the final decision of that committee was clearly subject to the veto of the College President.

At the October meeting, when the original application was being considered by the committee, representatives of

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[3] Functions and Responsibilities of Standing Faculty Committees, p. 14.

[4] Functions and Responsibilities of Standing Faculty Committees, p. 1.

the group were asked how they would respond to issues of violence as compared to the action taken by other SDS chapters, where violence had in fact erupted on college campuses. Their response was significantly evasive and obtuse; it was consistent with and typical of a generally recognized pattern of response, by those who are known to foster subversive and violent conduct. They stated, "our action would have to depend on each issue." When pressed on the means of action to be used, the response again was in similar vein. When specifically asked whether they could foresee the organization's activities interrupting a college classroom activity, their response was that it was impossible to say.[5] The committee's action was deferred until October 13, 1969, when supplemental data was to be submitted. At the latter meeting, the question was asked as to the meaning of the term "local chapter," as it related to the national alliance. The response was that there was no such thing as an SDS national and the members wanted to keep a loose arrangement, so as to pick ideas from several of the factioned groups; furthermore, the concept of SDS exists in the minds of those who run it. At the conclusion of the meeting, the Student Affairs Committee voted 6-2 to record their approval of the local chapter as an approved campus club. However, this was done with the proviso that they would consider immediate suspension of the local chapter, if its activities, programs and functions were incompatible with those of the college, under Chapter Section 5-E relating to a Statement on Rights, Freedoms and Responsibilities of Students[6] which reads in part:

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[5] Hearings Officer's Exhibit "O", p. 3.

[6] Plaintiffs' Exhibit "B".

> "Students do not have the right to deprive others of the opportunity to speak or to be heard, to invade the privacy of others, to damage the property of others, to disrupt the regular and essential operation of the College, or to interfere with the rights of others."

An additional reason advanced by the majority of the Student Affairs Committee to justify their action in approving recognition, was that they had approved it in order to allow students the opportunity to exchange ideas through an organization in the academic market place.

A minority report of that same committee expressed their dissenting reasons for voting to deny the application, namely: (1) that the organization did not submit a specific constitution and thus failed to conform to the requirements for recognition; (2) the use of the descriptive term "local chapter" while denying affiliation with any national organization provides a lack of clarity, and (3) that while it was not the minority's intention to exclude any left wing group as such, they were opposed to the nature of the present organization for approval, as an officially approved campus organization.[1]

The College President's final decision, as expressed in his letter of July 10, 1970, to the acting Dean of Student Affairs, reaffirmed his prior ruling denying approval of the plaintiffs' application. The reasons for his action were (1) that if the group utilizes the name of an existing organization, how can it be totally free from the dictates of that organization; (2) Article III of the national SDS constitution provides for independent groups who may affiliate as associates, which chapters are expected to operate

[1] Hearing Officer's Exhibit "I", p. 3.

within the broad term of policies set by the national convention and the national council; (3) the documentary exhibits submitted indicated to him that their prospective campus activities were likely to cause a disruptive influence at CCSC.

President James' decision is consistent with the college policy Statement on the Rights, Freedoms and Responsibilities of Students.[8] It fulfills in a responsive manner the authority entrusted to him, by the Board of Trustees of State Colleges and the statutory duties assigned to that Board by the Legislature.[9] Nothing in his administrative decision interferes with the constitutionally protected rights of freedom of speech or association by individuals or groups of individuals. It is not in the same category as a criminal prosecution involving the teaching or espousing of revolution; nor does it attempt civilly to enjoin those utterances which might be considered as an imminent threat to order. *See,* Brandenburg v. Ohio, 395 U.S. 444, 447, 89 S.Ct. 1827, 23 L.Ed.2d 430 (1969). All that is denied is the college administration's stamp of approval on the organization as an officially accepted and recognized campus club with its attendant privileges. Should these applicants wish to form such an SDS organization off the college campus, there are no rules to prevent it, nor has there been any attempt by the college authorities to do so. The College President's responsibility is fulfilled, when he has provided reasonable assurance of an educational environment designed to enhance the learning process and free it from any organized group likely to cause violent acts of disruption on campus.

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[8] See footnote 6, *supra.*

[9] Conn. Gen. Stat. §§10-109, 10-109b.

"Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values. On the other hand, '(t)he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools,' Shelton v. Tucker, 364 U.S. 479, 487, 81 S.Ct. 247, 251, 5 L.Ed.2d 231 (1960)." Epperson v. Arkansas, 393 U.S. 97, 104, 89 S.Ct. 266, 270, 21 L.Ed. 2d 228 (1968).

President James' discretionary action in denying this application cannot be legitimately magnified and distorted into a constitutionally cognizable interference with the personal ideas or beliefs of any segment of the college students; neither does his action deter in any material way the individual advocacy of their personal beliefs; nor can his action be reasonably construed to be an invasion of, or having a chilling effect on academic freedom.

What is denied to this plaintiff group is the privileged position of acting from within the college structure, as an officially approved campus organization. The historical record of their application discloses that the plaintiffs have not met their burden of complying with the college standards established by the declaration of rights, freedoms and responsibilities of students adopted and approved by the school administration.[10] Until they do so conform, they have no constitutional or other right to have the administrative seal of official college respectability conferred upon them under the theory of constitutional equal protection. The opportunity of an open dialogue, with a free, unin-

[10] See footnote 6, *supra*.

hibited but respectful expression of ideas between teacher and student, scholar and scholar, with its attendant critical exchange exposed to full view, creates the epitome of the college students' never ending search for truth. This autonomy of intellectual freedom of academic expression has not been materially deterred or lessened by the College President's action. He is held responsible for the climate of campus discipline. To be effective in carrying out his responsibilities, he must be afforded broad discretionary authority with which to achieve it.

> "We * * * hold that a college has the inherent power to promulgate rules and regulations; that it has the inherent power properly to discipline; that it has power appropriately to protect itself and its property; that it may expect that its students adhere to generally accepted standards of conduct." Esteban v. Central Missouri State College, 415 F.2d 1077, 1089 (8 Cir. 1969).

The applicants have not sustained their burden of demonstrating that their identifying with the national corporate name of the SDS permits them to function with absolute freedom from the dictates, influence and image of the national organization, notwithstanding their verbal protests to the contrary. President James found that Article III of the SDS national constitution recognizes local chapters and affiliates and it expects their cooperation. In a practical sense, it would be impossible for the college administration or the public at large, to ascertain at any given time, the true relationship or open honest objectives of these identically named organizations, despite its claim to being a separate entity.

The evidence clearly and unequivocally discloses that the philosophy and purposes of the national organization ad-

vocate the violent overthrow of existing government institutions, through the medium of disruptive anarchistic force. The College President responsibly concluded that "recognition of such a group would be contrary to the orderly process of change and would be contrary to the philosophy and lawful mission of this College." This Court finds that his decision was validly arrived at and violated no constitutional rights of the plaintiffs under the first and fourteenth amendments to the federal constitution.

This Court is not persuaded by the plaintiffs' representation that the refusal of campus approval denies them equal protection. Were their theory adopted, precedent would demand approval of all purported unaffiliated chapters as a matter of right, not only on every college campus but every high school campus as well. Under the mask of cherished academic freedom, local cell-units would be free to insist on the right to operate from within the organized structure of every school campus in the nation. It would follow that this should include the right to import, under the guise of freedom of speech, professional agitators whose openly professed objectives are educational disruption and disorder, through the exemplification of the philosophy of violent activism and anarchy.

As this Court said in Zemel v. Rusk, 228 F.Supp. 65, 71 (1964), "Personal vigilance to safeguard freedom should never be permitted to become a sword used for the destruction of the edifice it protests it is protecting." The plaintiffs' motion is denied; summary judgment is granted to the defendants and the action is dismissed. So ordered.

Opinion of the United States District Court, District of Connecticut

UNITED STATES DISTRICT COURT

D. CONNECTICUT

April 24, 1970

Civ. A. No. 13721

CATHERINE J. HEALY *et al.*,

Plaintiffs,

—v.—

F. DON JAMES *et al.*,

Defendants.

Alvin Pudlin, Abraham S. Silver, Pudlin & Silver, New Britain, Conn., for plaintiffs.

F. Michael Ahern, Asst. Atty. Gen., State of Connecticut, Hartford, Conn., for defendants.

MEMORANDUM OF DECISION

CLARIE, District Judge.

This case was submitted to the Court on a stipulation of facts agreed to by counsel. The plaintiffs are students at Central Connecticut State College (CCSC) and the defendants are CCSC administrators or members of its Board of Trustees. Jurisdiction is alleged pursuant to 42 U.S.C. § 1981 and § 1983, 28 U.S.C. § 1343(3) and (4), and Article

III, § 2 of the Constitution. The plaintiffs are claiming deprivation of their constitutional rights under the first, fifth and fourteenth amendments to the federal constitution.

The plaintiffs, following the established procedures, sought official recognition by the college for an organization to be known as a local chapter of the Students for a Democratic Society. (SDS). Such a status of official recognition entitles the organization to announce its activities in the campus newspaper, have access to post notices on the college bulletin boards, and have assigned to them at their requests, college facilities for meetings and a faculty adviser. Recognition does not thereby entitle an organization to college financial support. In accordance with the established procedure, the plaintiffs submitted their application to defendant Judd, the Acting Dean of Student Affairs; it contained a written statement of the purposes, the names of the officers and the procedures of the proposed organization.[1] It stated therein that the CCSC students for a Democratic Society were not under the dictates of any national organization. Dean Judd and President James of CCSC were further orally informed by some of the petitioners, that their organization would in no way be affiliated with, or owe allegiance to the officers of any national organization known as the SDS.

The declared purposes of the organization set out in the petition to the Student Personnel Committee requesting official recognition were as follows:

"1. Because the university is intended to be the arena of education, where there is an unfettered exchange of ideas, S.D.S. would provide *a forum* of discussion and self-education for students developing an analy-

[1] Plaintiffs' Exhibit B.

sis of American society and institutions, including higher education, and the world situation in general.

"2. Because it is felt that ideas without parallel in deeds are empty and ephemeral, and that no area of life exists in a vacuum and unrelated to all other areas of life. S.D.S. would provide *an agency* for integrating thought with action so as to bring about constructive changes in the university, in American life, and the world.

"3. Because of the responsibility of all peoples for the welfare of others, S.D.S. would provide a *coordinating body* for relating the problems of leftist students and other groups, such as the student body as a whole, the working class, the black populace or whatever other individuals or groups in fact or potentially in accord with the purposes of the CCSC chapter of S.D.S." Petitioners' Exhibit A.

This application was referred to the Student Personnel Committee, an advisory group consisting of the Dean of Students, three faculty members, and four students, whose function it was to review and recommend policies concerning student affairs. This group favorably voted six to two to recommend to President James that the SDS chapter be given official recognition by the administration as a campus organization. Notwithstanding the committee's recommendation, James denied them official recognition and accompanied it with the following statement:

"I am disapproving recognition of a local chapter of Students for a Democratic Society.

"Though I have full appreciation for the action of the student Affairs Committee and the reasons stated in

their minutes for the majority vote recommending approval of a local chapter of Students for a Democratic Society, it is my judgment that the statement of purpose to form a local chapter of Students for a Democratic Society carries full and unmistakable adherence to at least some of the major tenets of the national organization, loose and divided though that organization may be. The published aims and philosophy of the Students for a Democratic Society, which include disruption and violence, are contrary to the approved policy (by faculty, students, and administration) of Central Connecticut State College which states:

> 'Students do not have the right to invade the privacy of others, to damage the property of others, to disrupt the regular and essential operation of the college, or to interfere with the rights of others.'

"The further statement on the request for recognition that 'CCSC Students for a Democratic Society are not under the dictates of any National organization' in no way clarifies why if a group intends to follow the established policy of the College, they wish to become a local chapter of an organization which openly repudiates such a policy.

"Freedom of speech, academic freedom on the campus, the freedom of establishing an open forum for the exchange of ideas, the freedoms outlined in the Statement of Rights, Freedoms and Responsibilities of Students that 'college students and student organizations shall have the right to examine and discuss all questions of interest to them, to express opinion publicly and pri-

vately, and to support causes by orderly means. They may organize public demonstrations and protest gatherings and utilize the right of petition,'—these are all precious freedoms that we cherish and are freedoms on which we stand. To approve any organization or individual who joins with an organization which openly repudiates those principles is contrary to those freedoms and to the approved 'Statement on the Rights, Freedoms, and Responsibilities of Students' at Central." Petitioners' Exhibit D.

Prior to the current incident, the school administration, with faculty approval, had commendably adopted and generally promulgated a written set of school policies defining the "Rights, Freedoms, and Responsibilities" of students at the college. Article V, Section E thereof, provides:

> "College students and student organizations shall have the right to examine and discuss all questions of interest to them, to express opinion publicly and privately, and to support causes by orderly means. They may organize public demonstrations and protest gatherings and utilize the right to petition. Students do not have the right to deprive others of the opportunity to speak or be heard. • • • " Petitioners' Exhibit B.

Following the disapproval action by President James, some of the petitioners, along with other students not herein parties, met at a campus coffee shop to discuss the President's action. During this meeting they were approached by defendants Judd and Clow, the latter being the Dean of Administration Affairs at CCSC, and served with a memorandum which stated:

"Notice has been received by this office of a meeting of the 'C.C.S.C.—S.D.S. on Thursday—November 6 at 7:00 p. m. at the Devil's Den'.

"Such meeting may not take place in the Devil Den of the Student Center nor in or on any other property of the college since the C.C.S.C.—S.D.S. is not a duly recognized college organization.

"You are hereby notified by this action to cease and desist from meeting on college property." Petitioners' Exhibit E.

The respondents concede that at all times pertinent to the above events, the Board of Trustees for CCSC had knowledge of the actions of the defendants James, Judd and Clow and the Court thus infers that the action and the procedures followed were carried out with its approval.

Article III, § E of the school's policy statement, supra, provides in part:

"The judicial process shall be such that students have the right to appeal not only disciplinary action deemed unwarranted but also a college regulation or policy considered unjust. The decision of the appeal court shall be final, subject only to the student's appeal to the President of the College or ultimately to the Board of Trustees." Petitioners' Exhibit B.

Petitioners now seek an order from this Court restraining the defendants and their agents from interfering with them and others similarly situated from meeting as an organization and participating in activities as a local chapter of the SDS, and directing said defendants to afford

said organization official recognition as a campus student organization.

The petitioners are not challenging the constitutionality of the standards established by the college for the recognition of campus organizations and thus that question is not before the Court. The plaintiffs do claim that their application for recognition does conform with the established standards and that defendant James' action in going outside that application and arbitrarily attributing to them aims and purposes not evidenced therein, without first affording them some form of a hearing was in itself a constitutional denial of procedural due process of law.

There is nothing in the stated purposes of the petitioners on the application itself which can be said to be inconsistent with the standards for recognition set by the college.[2] In fact, President James in his memorandum denying recognition, presents no claim to the contrary. His reasons for denying recognition were based on what he personally considered to be the aims and philosophy of the National Organization of the SDS. These aims and objectives he attributed to the petitioners and found them to be contrary to those established at CCSC. Thus it must be determined whether or not President James exceeded the bounds of procedural due process in going outside the application to consider factors which he regarded as being both factual and relevant.

Those cases which deal with the rights of student social organizations generally recognize that a college may exclude or closely regulate such organizations in the furtherance of its academic, as opposed to its social, or other extra curricular activities. See Waugh v. Board of Trustees,

[2] Plaintiffs' Exhibit A.

237 U.S. 589, 35 S. Ct. 720, 59 L.Ed. 1131 (1915); Sigma Chi Fraternity v. Regents of the University of Colorado, 258 F.Supp. 515 (D.Colo.1966), commented on in 39 U. Colo.L.R. 149 (1967); Webb v. State University of New York, 125 F.Supp. 910 (N.D.N.Y.1964). However, the foregoing cases are not determinative of the question presented here which relates to a campus political organization. These cases are distinguishable on at least two grounds: (1) a political organization, by its very nature, is entitled to greater protection under the first amendment, and (2) the petitioners' challenge is primarily based upon procedural grounds, while the social organization cases dealt with substantive questions.

Similar considerations arise, other than those with which we are dealing, when circumstances require that the college administration rule on the question of permitting controversial visiting speakers to appear on the campus. This latter group of cases may summarized in principle as follows:

> "No one has the absolute, unlimited right to speak on a university campus; however, when the university opens its doors to visiting speakers, it must follow constitutional principles if it seeks to regulate those whom recognized groups may invite." Smith v. University of Tennessee, 300 F.Supp. 777, 781 (E.D.Tenn.N.D. 1969). See also Brooks v. Auburn University, 296 F. Supp. 188 (E.D.Ala.1969) and Snyder v. University of Illinois, 286 F.Supp. 927 (three-judge court, N.D.Ill. 1968).

Analogous holdings to those in the campus-speaker cases also exist in those cases which deal with the right of outside organizations to use university facilities for meetings and

speeches. In Danskin v. San Diego Unified School District, 28 Cal.2d 536, 545-546, 171 P.2d 885, 891, the Supreme Court of California stated:

> "The state is under no duty to make school buildings available for public meetings. * * * If it elects to do so, however, it cannot arbitrarily prevent any members of the public from holding such meetings. ([N]or) * * * make the privilege of holding them dependent on conditions that would deprive any members of the public of their constitutional rights. A state is without power to impose an unconstitutional requirement as a condition for granting a privilege even though the privilege is the use of state property." See also Buckley v. Meng, 35 Misc. 467, 230 N.Y.S.2d 924 (1962).

Cases dealing with disciplinary actions against students for the violation of university rules and regulations have also required that constitutional safeguards be followed. These cases require that the regulation under which the charge is made shall not be unduly vague and that the student charged be given notice of the charge and an opportunity for a hearing. See, e.g., Dixon v. Alabama State Board of Education, 294 F.2d 150 (5th Cir. 1961); Soglin v. Kauffman, 295 F.Supp. 978 (W.D.Wis.1968); Dickey v. Alabama State Board of Education, 273 F.Supp. 613 (M.D. Ala.1967).

The common theme adhered to in all of these cases is that state colleges and universities are not at liberty to adopt unduly vague regulations nor may they act arbitrarily under reasonable specific ones. See generally, Wright, The Constitution on the Campus, 22 Vand.L.Rev. 1027 (1967); Van Alstyne, The Judicial Trend Toward Student Academic Freedom, 20 U.Fla.L.R. 290 (1968);

Symposium, Student Rights and Campus Rules, 54 Calif. L.R. 1 (1966); 45 Denver L.J. 497-678 (1968) (a series of articles dealing with various aspects of the student-university relationship). These same general principles necessarily apply in the case at bar.

The primary purpose of a college or university is to provide the best possible education for its students.

> "Unless (college) officials have authority to keep order, they have no power to guarantee education. If they cannot preserve order by rule and regulation, and insist on obedience to those rules, they will be helpless in the face of a mob, powerless to command or rebuke the fanatic, the irritant, the malingerer, the rabble rouser. To be sure, this is a tax supported institution, but this does not give license to chaos, or the hope to create chaos. The majority of the taxpayers who established, through representative government, the institution, and all the taxpayers who support this institution, have a vested interest in a peaceful campus, an academic climate of order and culture. The power of the president to oversee, to rule, is an integral part of the mechanism for providing and promoting education at State College. Be that as it may, colleges, like all other institutions, are subject to the Constitution. Academic progress and academic freedom demand their share of Constitutional protection." Hammond v. South Carolina State College, 272 F.Supp. 947, 949 (D.S.C.1967).

Thus, a student may exercise his constitutional rights only so long as "he does so without 'materially and substantially interfer(ing) with the requirements of appropriate discipline in the operation of the school' and without colliding with the rights of others." Tinker v. Des Moines Indepen-

dent Community School District, 393 U.S. 503, 513, 89 S.Ct. 733, 740, 21 L.Ed.2d 731 (1969).

Standards and tests, both as to substance and procedure, which have been customarily applied in non-educational institution cases certainly have now come to apply to the college campus.

> "The 'freedom of association' cases (see, e. g., N. A. A. C. P. v. Alabama ex rel. Patterson, 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958); Bates v. City of Little Rock, 361 U.S. 516, 80 S.Ct. 412, 4 L.Ed.2d 480 (1960); Shelton v. Tucker, 364 U.S. 479, 81 S.Ct. 247, 5 L.Ed.2d 231 (1960); N. A. A. C. P. v. Alabama ex rel. Flowers, 377 U.S. 288, 84 S.Ct. 1302, 12 L.Ed.2d 325 (1964) do not provide an immediate solution, since they indicate that a student group may be required to prove a likelihood that chartering, membership registration and faculty sponsorship create a burden on free association which outweighs the institution's general interest in ensuring that organizations contribute to the academic environment." Lucas, Comment, 45 Denver L.J. 622, 634 (1968).

Thus, by way of example, while a leader of the Ku Klux Klan may hold a rally for the purpose of "'advocat(ing) * * * the duty, necessity or propriety of crime, sabotage, violence, or unlawful methods of terrorism as a means of accomplishing industrial or political reform'" Brandenburg v. Ohio, 395 U.S. 444, 445, 89 S.Ct. 1827, 1828, 23 L.Ed.2d 430 (1969), it does not follow that a student group can gain university recognition, and the advantages which accompany such recognition, for such a purpose.

No student group is entitled, per se, to official college recognition. Rather, once a college allows student groups

to organize and grants these groups recognition, with the attendant advantages, constitutional safeguards must operate in favor of all groups which apply. This requires adequate standards for recognition and the fair application of these standards. It is the procedural application of the existing college standards that is in issue here.

The petitioners' application for recognition was submitted to President James, with the recommendation of the Student Personnel Committee, an advisory committee, that it be granted. He denied it on the grounds that he found the aims of the National SDS to be contrary to the prevailing standards set to qualify for recognition at CCSC. If a college administrator of a public institution is free to go outside the group's application to make his own personal findings as to their purpose, and without the benefit of a minimal hearing, then any political group, no matter what its stated purpose, could be summarily denied recognition on the personal whim of the deciding authority.

A student organization cannot be denied college recognition on the *ex parte* findings of the recognizing authority, where these findings have no basis in the organization's application for recognition. Where ambiguity exists in such an application, and such ambiguity, if resolved against the applicants would result in their non-recognition, constitutional due process requires that a timely hearing be noticed and the petitioners be given at least an opportunity to be heard. If the college president does not have the time personally to devote to this kind of matter, as it is well understood he may not, he may delegate an agent to conduct an appropriate hearing. Upon the overall record, he would then make his findings as to whether or not the application met the existing policy standards of the college, which would qualify the applicant club for official campus recognition.

The stipulation submitted to the Court contained no record of the contents of the minutes of the Student Personnel Committee; and there have been no exhibits entered to support any factual finding by that Committee relating to policy standards which were submitted to President James with the Committee's recommendation.

The ambiguity in this application is patent in that it states that the petitioners wish to become a "local" chapter of SDS. The term itself, "local chapter," strongly infers some kind of affiliation with a more extensive parent organization; yet the application specifically represents that the local group would not be under the dictates of the national organization. The college administration may wish to have this ambiguity clarified and the credibility of the representations ascertained and verified. The initial question might be whether or not a local unaffiliated chapter of SDS can lawfully exist without being subject to the dictates of the national organization. A copy of the organization's charter, by-laws or other similar type of document might be helpful on this point. In light of the recent fragmentation of the National SDS, it might also be relevant to know of which faction, if any, this group wishes to become a local chapter. Were it to be found to be impossible for a local chapter of SDS to exist without being affiliated with the national parent organization could the aims and philosophy of the latter group become relevant and important. These suggested areas of inquiry are in no way intended to restrict the scope of the college's hearing on this matter, but rather simply to point out areas of inquiry which might resolve the issue.

State law vests in the State College Board of Trustees responsibility for the adoption of policies governing the administration of Central Connecticut State College.[3] This

[3] Conn. Gen. Stat. §§10-109, 10-109b.

power was delegated to President James as the agent of the Board with power to administer, maintain and supervise the orderly operation of the College educational program. Campus disciplinary controls must be the ultimate decision and responsibility of the President and the Board of Trustees. No court should interfere in reviewing the wisdom of any policy adopted, provided there is no invasion of constitutional due process of law, substantively or procedurally. It is not the business of the court nor is it within its prerogative to interfere with or attempt to administer college rules and regulations. To do so would invite administrative indecision and chaos.

Only where a serious substantive or procedural right is claimed to have been invaded should the court review an aggrieved petitioner's claim. In this case a constitutional issue has been raised by the plaintiffs, namely, that their rights of freedom of speech and freedom of association have been violated by what they claim has been the arbitrary refusal of the President to grant them recognition as an unaffiliated local chapter of the SDS.

It should be made crystal clear that this Court does not find the defendants lack authority to deny petitioners' application seeking official campus recognition. On the contrary, if substantial evidence is offered at the hearing to the effect that the proposed club has among its aims and purposes, the philosophy of violent activism, then the college administration would have the lawful right to refuse approval of the new club and thus refrain from conferring upon it the status of official campus respectability. Where it is found that a club's objectives are designed to encourage and foster campus disruption and violence so as to frustrate and destroy the college's established educational policies, it is not only the lawful right of the college administra-

tion, but it is its duty to act with firmness and decision. No campus group operating under a false disguise while mouthing claim to pure motives, or pursuant to a constitutional have administrative approval, where its clear objectives are claim of freedom of expression should ever be permitted to designed to violate the personal or property rights of others by committing physical acts which are plainly wrongful. When the climate of civility in the academic community is once destroyed, the intellecual interchange of ideas ceases and academic freedom with its dispassionate search for truth is destroyed.

A hearing is hereby ordered to be held upon reasonable notice to the parties, which shall be conducted by President James, or a hearings officer duly designated by him and acting in his stead. All of the plaintiffs in this action shall be afforded an opportunity to be heard and shall be entitled to cross-examine witnesses; said hearing shall be conducted in a climate of respectful civility and record thereof made. Said hearing shall take place within thirty (30) days of this order. This Court shall retain jurisdiction of this action for the entry of such further orders or judgments by the Court as may be necessary and appropriate.

The foregoing opinion shall constitute the findings of fact and conclusions of law required to be filed by the Court pursuant to Rule 52(a); Fed.R.Civ.P. so ordered.

Judgment

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the fifteenth day of July one thousand nine hundred and seventy-one.

Present:

HON. LEONARD P. MOORE,
HON. J. JOSEPH SMITH,
Circuit Judges,

HON. WILLIAM H. TIMBERS,
District Judge.

CATHERINE J. HEALY, PAUL PETER BROWN, LAWRENCE STUB, JAMES VINCENT CAREY, THEODORE ROBERT LESTOR, JOSEPH A. KNOWLES, EDWARD JOHN O'NEIL and PETER BROWN,

Plaintiffs-Appellants,

v.

F. DON JAMES, individually and as President of Central Connecticut State College, *et al.,*

Defendants-Appellees.

Appeal from the United States District Court for the District of Connecticut.

This cause came on to be heard on the transcript of record from the United States District Court for the District of Connecticut, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed with costs to be taxed against the appellants.

A. DANIEL FUSARO
Clerk

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 452

CATHERINE J. HEALY, ET AL,

Petitioners,

v.

F. DON JAMES, ET AL,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

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INDEX

	Page
REASONS FOR DENYING THE WRIT	1
CONCLUSION	3

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REASONS FOR DENYING THE WRIT

The record does not adequately raise a constitutional issue.

Neither Defendant James nor any of the other named defendants has ever interfered with or proscribed the plaintiffs' exercise of their constitutional rights, on or off campus, to speak, to assemble, to petition or to demonstrate. (Petitioners' Appendix, p. 3a).

We respectfully submit that Judge Smith in his dissent has obviously confused the issue in the case. The only issue before the Court of Appeals was whether the defendant James properly acted within his broad discretion and comprehensive authority in refusing to grant official recognition

to the local chapter of Students for a Democratic Society. The majority of the court properly found that he did.

Judge Clarie's comprehensive opinion of April 24, 1970 focused on the ambiguity apparent in the application for recognition of the local chapter of Students for a Demoratic Society and ordered the college administrators to conduct an administrative hearing to clarify the ambiguity.

The petitioners, all college students whose maturity has been recognized by virtue of the Twenty-sixth Amendment to the Constitution of the United States, were represented by legal counsel at the administrative hearing, as well as throughout the court proceedings. In spite of their maturity and legal representation, the petitioners opted to refuse to comply with the suggestions of Judge Clarie "in at least the following respects:

(1) They failed to submit a copy of their charter or by-laws.

(2) They failed candidly to clarify the apparent conflict between the name of their proposed organization, 'Students for a Democratic Society of Central Connecticut State College,' and their disclaimer of being under the dictates of the national SDS organization.

(3) They failed candidly to respond to inquiries whether they would resort to violence and disruption on the CCSC campus, including interruption of classes.

(4) They failed to testify at the administrative hearing and to subject themselves to cross-examination, despite Judge Clarie's explicit direction.

(5) They failed to offer any evidence whatsoever at the administrative hearing designed to enable the college administration and Judge Clarie to resolve the issues

for which the hearing was ordered; but, on the contrary, they sanctioned conduct at the hearing just the opposite of the 'climate of respectful civility' ordered by Judge Clarie". (P.A., pp. 20a, 21a).

Accordingly, the majority of the Court of Appeals found it "neither necessary nor appropriate, upon this record, to reach the substantive constitutional questions which might have been presented if plaintiffs had availed themselves of the procedural due process to which Judge Clarie ordered they were entitled and which the college administration accorded them." (P.A., pp. 22a, 23a).

CONCLUSION

This Court should deny the Petition for Certiorari.

Respectfully submitted,

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October 20, 1971

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Petitioners,

—v.—

F. DON JAMES, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUPPLEMENTAL BRIEF FOR PETITIONERS

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IN THE

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OCTOBER TERM, 1971

No. 71-452

CATHERINE J. HEALY, *et al.*,

Petitioners,

—v.—

F. DON JAMES, *et al.*,

Respondents.

SUPPLEMENTAL BRIEF FOR PETITIONERS

The petitioners are filing this supplemental brief to bring to the Court's attention a recent decision of the United States Court of Appeals for the Fifth Circuit in a case involving the recognition of student organizations on campus. *University of Southern Mississippi Chapter of the Mississippi Civil Liberties Union* v. *University of Southern Mississippi,* November 10, 1971. For the convenience of the Court the Fifth Circuit opinion is set out below as an Appendix to this brief.

The opinion held that the university decision to withhold recognition of a student organization constituted an unconstitutional prior restraint not justified by the possibility that the organization would engage in litigative challenges of university regulations.

The Fifth Circuit decision is in conflict with the decision below, and *certiorari* should be granted to resolve that conflict.*

Respectfully submitted,

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November, 1971

* The Fifth Circuit distinguished the decision below as being based on SDS's violent propensities and its disruptive behavior at the hearing. Our petition indicated that those conclusions of the Second Circuit involve serious distortions of the record and cannot justify avoiding the constitutional issues presented by the petition.

Opinion of the United States Court of Appeals for the Fifth Circuit

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 71-1801

Summary Calendar*

UNIVERSITY OF SOUTHERN MISSISSIPPI CHAPTER OF THE MISSISSIPPI CIVIL LIBERTIES UNION, *et al.*,

Plaintiffs-Appellants,

versus

UNIVERSITY OF SOUTHERN MISSISSIPPI, *et al.*,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

(November 10, 1971)

Before:

WISDOM, COLEMAN, and SIMPSON,

Circuit Judges.

*Rule 18, 5 Cir.; see Isbell Enterprises, Inc. v. Citizens Casualty Company of New York, et al., 5 Cir. 1970, 431 F.2d 409, Part I.

WISDOM, *Circuit Judge*: Twice this Court has been a harbinger of major expansions in the First Amendment rights of students. In *Dixon* v. *Alabama State Board of Education,* 5 Cir. 1961, 294 F.2d 150, we turned our backs on the old saw that attendance at a university was a privilege granted by the state and was therefore subject to whatever conditions the state sought to impose. Five years later, we said that students' rights to free expression cannot be curtailed unless that expression "materially and substantially interfere[s] with the requirements of appropriate discipline in the operation of the school." *Burnside* v. *Byars,* 5 Cir. 1966, 363 F.2d 744, 749. The Supreme Court adopted this phrase in the landmark case of *Tinker* v. *Des Moines Independent Community School District,* 1969, 393 U.S. 503, 83 S. Ct. 733, 21 L. ed.2d 737.

Today's decision requires us to break no new ground. During the summer of 1970, the plaintiff, the University of Southern Mississippi Chapter of the Mississippi Civil Liberties Union was denied official recognition as a student organization in accordance with the usual procedures provided by the University of Southern Mississippi for processing proposed charters of student organizations.[1] This denial meant that the Chapter could neither participate in

[1] The Chapter's application was submitted to the Director of Student Activities and presented by him to the Student-Faculty Committee on Student Organizations. The membership of the Committee is appointed by the University President, William D. McCain, and is presided over by the Dean of Student Affairs. The Committee consists of four faculty members and three students. After two meetings the Committee voted to deny the charter; the decision was approved by President McCain. Upon rehearing, the Committee stuck to its decision, and this action was filed. We need not consider the procedural adequacy of these proceedings since we have concluded that, however it conducted its business, the Committee failed to adduce any valid reasons for banning the Chapter from the University campus.

University-approved student activities nor conduct student activities on campus on its own initiative. Thus exiled, the Chapter filed suit in federal district court for a preliminary injunction to compel the University to approve its charter and grant it official recognition.

The district court found that the Chapter had requested and been denied a statement of reasons for the University's denial of its charter application, and held that the Chapter was entitled to such a statement. In addition, the district court considered each of the grounds which had been asserted by the University during the court proceedings to justify denial of a charter. The only ground which seemed to the district court to provide a possible basis for keeping the Chapter off campus was its litigious orientation.[2] This, said the district court, was not alone enough to justify the denial; but the court took the view that the University need not condone "frivolous, vexatious, and harassing actions to impede the legitimate function of a university." It therefore refused to order approval of the plaintiffs' charter. Instead, it simply provided plaintiffs with a new chance to apply for recognition, and, implicitly, the University with a new chance to adduce support for its assertion that the Chapter's activities would interfere with the operation of the University.[3]

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[2] The district court found: "Of the reasons offered for the denial of the charter, the Court does not find sufficient merit in any to justify sustaining the University's position except for the barely tenable reasons based on the expressed threats of litigation by the local chapter and this history of the litigation waged by the state and national organizations."

[3] The district court also noted, apparently on its own motion, that the Chapter proposed to include non-students as members. The record disclosed that on a prior occasion a charter had been denied to a group whose membership was to include non-students. Although the district court thought that the university should have

It is no longer a serious contention that "either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker, supra,* at 393 U.S. 506, 21 L. ed.2d 737. Student rights of free expression may be prohibited only if they "materially and substantially [interfere] with the requirements of appropriate discipline in the operation of the school." *Tinker* at 393 U.S. 509, 21 L. ed.2d 739, citing *Burnside* v. *Byars,* 5 Cir. 1966, 363 F.2d 744, 749. When the restriction upon student expression takes the form of an attempt to predict in advance the content and consequences of that expression, it is tantamount to a prior restraint and carries a heavy presumption against its constitutionality. See *Bantam Books, Inc.* v. *Sullivan,* 1963, 372 U.S. 58, 70; *Organization for a Better Austin* v. *Keefe,* 1971, 39 U.S.L.W. What is at issue here is whether the students affiliated with the Chapter will be permitted to use the buildings and grounds of the campus to conduct meetings and discussions. The restriction imposed by the University is analogous to one attempting to prevent a particular group or individual from speaking on school premises. Such "speaker bans" uniformly have been struck down. E.g., *Brooks* v. *Auburn University,* 296 F. Supp. 188 (M.D. Ala. 1969); *see* Wright, The Constitution on the Campus, 22 Vand. L. Rev. 1027, 1050-51 (1969). The rationale of the speaker ban decisions is that it is plainly incompatible with our constitutional

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"an opportunity to consider" this issue during any further proceedings, we see no reason why a justification never raised by the University should play a part in our disposition of this case. If the University did not see fit to object to the composition of the Chapter's proposed membership, we find it difficult to view the problem as significant enough to justify banning this organization from the campus of the University.

system for a state-supported institution to permit some speakers but turn others away "according to the orthodoxy or popularity of their political or social views." *Brooks* v. *Auburn University,* 296 F. Supp. at 194. To sustain such censorial practices, a University would at the very least have to demonstrate a strong probability of the kind of material disruption spoken of in the *Tinker* case.

The district court found only that the litigiousness of the national and state Civil Liberties Unions was a "barely tenable ground for denying the charter to the [USM] Chapter". Serious, bona fide litigation carried on by a minority group as a peaceful means of guaranteeing its rights in a larger community is a form of expression and association protected by the First and Fourteenth Amendments. *NAACP* v. *Button,* 1963, 371 U.S. 415, 83 S. Ct. 328, 9 L. ed.2d 405. As such, it cannot serve as a justification for keeping the Civil Liberties Union off the campus of the University unless the litigation itself would result in the kind of disruption spelled out in *Tinker.*

Only litigation conducted in bad faith could fill that bill. The lower court expressed the thought that if the Student Activity Committee were to make a new investigation, the Committee might turn up some support for the assertion that the Chapter's litigation would be vexatious and frivolous. This bare possibility, unsupported by any evidence in this record, does not justify a drastic curtailment of constitutionally favored expression. The assertion of novel and sometimes threatening positions through recourse to litigation might all too easily be characterized as vexatious or harassing by the individuals so threatened or surprised—and in perfectly good faith.

> But, in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk, Terminiello v. Chicago, 337 US 1, 93 L Ed 1131, 69 S Ct 894 (1949); and our history says that it is this sort of hazardous freedom—this kind of openness—that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious, society.

Tinker at 393 U.S. 508-09, 21 L. ed.2d 739. We think it far more compatible with free expression to relegate the University to its rights if the litigative activities of the Chapter should turn out to be carried on with disruptive intentions and do result in substantial disruption to the life of the University. In that event, the recognition granted the Chapter could be challenged and withdrawn in a fair proceeding based upon evidence of actual, and not vaguely predictive, misconduct.

The University has cited us to a recent case decided in the Second Circuit, *Healy* v. *James,* No. 733, July 15, 1971. In *Healy,* the court approved a denial of official recognition to the Central Connecticut Chapter of the Students for a Democratic Society ("SDS"). Without in any way implying our approval of the *Healy* decision, we need note only that it is factually distinguishable from the

present case in two respects. First, SDS has not expressed any commitment to a policy of litigation, and certain members of SDS have advocated disruption as a means of achieving its goals. Second, in *Healy*, SDS actually demonstrated a refusal to abide by university procedures for dispute resolution when it behaved defiantly during a court-structured hearing to determine its status. The denial in *Healy* was therefore based at least in part upon some evidence of actual misbehavior and not upon unfounded prognostication of future conduct.

Finally, the University argues that the Chapter has in effect waived its right to relief from this Court by failing to resort to the procedure for rehearing outlined by the district court. But we are unwilling to find fault with the Chapter for its impatience to achieve recognition for its constitutional prerogatives. It has now been more than a year since the Chapter was denied the same place in the sun on the campus of the University of Southern Mississippi accorded to other student organizations—without any justification at all, so far as we are able to discern.

We find it unnecessary to consider the adequacy of the procedure afforded the Chapter by the University, since even that procedure failed to produce any permissible justification for denying the Chapter's application. For the reasons stated herein, the judgment of the district court will be REVERSED, and the case REMANDED to the district court for the prompt issuance of an order requiring the University of Southern Mississippi to grant immediate approval to the application for recognition of the University chapter of the Mississippi Civil Liberties Union.

COLEMAN, *Circuit Judge* (concurring specially).

I am of the opinion that this is not purely a First Amendment case. The primary purpose of the proposed organization appears to be litigious rather than the right to receive and dispense information and ideas. I, therefore, would decide this appeal on Fourteenth Amendment (equal protection) grounds.

I do agree, in general, with the rationale of *American Civil Liberties Union of Virginia, Inc.* v. *Radford College,* 315 F. Supp. 893 (W.D. Virginia, 1970). In that case it was held that a tax supported college cannot apply restrictions to outside organizations "When such facilities have been made previously available to outside organizations". The record shows the existence of such outside organizations, as "Young Democrats" and "Young Republicans" on the Southern campus.

I agree heartily with what Judge Dalton wrote in *Radford,*

> "Student organizations do not have an unqualified right to be recognized by a college administration. College officials properly have wide discretion in operating the school and in determining what actions are most compatible with its educational objectives * * *. This Court has no desire to interfere with the operations of any school or to give encouragement to the trend of increasing challenges to the considered decisions of university administrators." 315 F. Supp. 896.

On the record compiled below, however, Mississippi Southern failed to develop constitutionally permissible ground for the exclusion of A.C.L.U.

In this state of affairs I can only point to the language in *Radford, supra,* 315 F. Supp. at 899:

> "If their conduct as a campus organization is unduly disruptive of the orderly functioning of the institution, this Court will be the first to reconsider its decision."

With this comment, I concur in the opinion prepared for the Court by Judge WISDOM.

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SUPREME COURT U. S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-452

Supreme Court, U.S.
FILED
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CATHERINE J. HEALY, *et al.*,

Petitioners,

—v.—

F. DON JAMES, *et al.*,

Respondents.

BRIEF FOR PETITIONERS

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INDEX

	PAGE
Opinions Below	1
Jurisdiction	1
Question Presented	2
Statute and Constitutional Provisions Involved	2
Statement of the Case	2
Summary of Argument	7
ARGUMENT	
I. The First Amendment, as applied by this Court and lower federal courts in other campus cases, requires that petitioners' SDS group be granted official recognition	11
II. Denial of petitioner's application for official recognition of Students for a Democratic Society was based upon both insubstantial evidence and constitutionally impermissible inferences	16
A. Reasons for Refusing Recognition	16
B. The Evidence Was Insufficient to Show That Petitioners Would Engage in Violence or Disruption	20
C. It Is Impermissible to Infer From the Evidence in the Record That Petitioners Would Engage in Disruption and Violence	23

PAGE

III. The denial of recognition was a forbidden prior restraint 25

IV. On this record, the First Amendment requires that CCSC-SDS be granted official recognition 29

A. Denial of Recognition Was Based on "Undifferentiated Fear or Apprehension of Disturbance" 29

B. Respondents Must Use Less Drastic Means to Secure Its Valid Interest in Being Free of Illegal Disorders 31

CONCLUSION 34

TABLE OF AUTHORITIES

Cases:

Aguirre v. Tahoka Independent School District, 311 F. Supp. 664 (N.D. Tex. 1970) 14

Amalgamated Food Employees v. Logan Valley Plaza Inc., 391 U.S. 308 (1968) 13

ACLU of Virginia v. Radford College, 315 F. Supp. 893 (W.D. Va. 1970) 14-15

Aptheker v. United States, 378 U.S. 500 (1964) 11, 32

Baird v. Arizona, 401 U.S. 1 (1971) 20, 24

Bantam Books v. Sullivan, 372 U.S. 58 (1963) 10, 25

Barker v. Hardway, 399 F.2d 638 (4th Cir. 1968) 32

Bates v. City of Little Rock, 361 U.S. 516 (1960) 25

Brandenburg v. Ohio, 395 U.S. 444 (1969) 18, 31

Brooks v. Auburn University, 296 F. Supp. 188 (M.D. Ala. 1969) 14, 27

PAGE

Brown v. Louisiana, 383 U.S. 131 (1966) 13
Buckley v. Meng, 34 Misc. 2d 467, 230 NYS2d 924 (Sup. Ct. 1962) 28
Butts v. Dallas Independent School District, 436 F.2d 728 (5th Cir. 1971) 13-14

Carroll v. President and Commissioners of Princess Anne, 393 U.S. 175 (1968) 10, 26, 28, 33
Communist Party v. Subversive Activities Control Board, 367 U.S. 1 (1961) 32

DeJonge v. Oregon, 299 U.S. 353 (1936) 20, 25, 33
Dickson v. Sitterson, 280 F. Supp. 486 (M.D. N.C. 1968) 14
Dixon v. Alabama State Board of Education, 294 F.2d 150 (5th Cir. 1961) 15

Edwards v. South Carolina, 372 U.S. 229 (1963) 13
Eisner v. Stamford Board of Education, 440 F.2d 803 (2nd Cir. 1971) 8, 12, 13
Estaban v. Central Missouri State College, 415 F.2d 1077 (8th Cir. 1969) 15, 32

Freedman v. Maryland, 380 U.S. 51 (1965) 10, 20

Guzik v. Drebus; 431 F.2d 594 (6th Cir. 1970), *cert. denied,* 401 U.S. 948 (1971) 15

Johnson v. Branch, 364 F.2d 177 (4th Cir. 1966), *cert. denied,* 385 U.S. 1003 (1967) 6
Jones v. Board of Regents, 436 F.2d 618 (5th Cir. 1970) 14

Keyishian v. Board of Regents, 385 U.S. 589 (1967) 20

PAGE

Lemon v. Kurtzman, 403 U.S. 602 (1971) 12

Marsh v. Alabama, 326 U.S. 501 (1946) 13
McConnell, In re, 370 U.S. 230 (1962) 8
Molpus v. Fortune, 311 F. Supp. 240 (N.D. Miss. 1970) 14, 27
Murchison, In Re, 349 U.S. 133 (1955) 22

NAACP v. Alabama, 357 U.S. 449 (1958) 25
New York Times v. United States, 403 U.S. 713 (1971) 10, 25-26
Niemotko v. Maryland, 340 U.S. 268 (1951) 13
Noto v. United States, 367 U.S. 290 (1961) 10, 23, 24, 30

Oliver, In Re, 333 U.S. 257 (1948) 22

Parmelee Transportation Co. v. Keeshin, 294 F.2d 310 (7th Cir. 1961), *rev'd*, 370 U.S. 230 (1962) 8
Pickings v. Bruce, 430 F.2d 595 (8th Cir. 1970) 14, 28

Riseman v. School Committee of the City of Quincy, 439 F.2d 148 (1st Cir. 1971) 14

Scales v. United States, 367 U.S. 203 (1961) 10, 20, 23
Scoville v. Board of Education of Joliet Township, 425 F.2d 10 (7th Cir. 1970) 13
Shelton v. Tucker, 364 U.S. 479 (1960) 11, 32
Shuttlesworth v. Alabama, 394 U.S. 147 (1969) 25
Smith v. University of Tennessee, 300 F. Supp. 777 (E.D. Tenn. 1969) 14, 27
Snyder v. Board of Trustees, 286 F. Supp. 927 (N.D. Ill. 1968) 14, 26, 27
Soglin v. Kaufman, 418 F.2d 163 (7th Cir. 1969) 14

PAGE

Speiser v. Randall, 375 U.S. 513 (1958) 10, 20
Stolar, Re, 401 U.S. 23 (1971) 20, 24
Sullivan v. Houston Independent School District, 307 F. Supp. 1328 (S.D. Tex. 1969) 13
Sweezy v. New Hampshire, 354 U.S. 234 (1957) 15, 16

Tilton v. Richardson, 403 U.S. 672 (1971) 8, 12
Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969) 7, 9, 10, 11, 13, 29
Trister v. University of Mississippi, 420 F.2d 499 (5th Cir. 1969) 6
Tumey v. Ohio, 273 U.S. 510 (1927) 22

United States v. Robel, 389 U.S. 258 (1967) 11, 32
University of Southern Mississippi Chapter of the Mississippi Civil Liberties Union v. University of Southern Mississippi, —— F.2d —— (5th Cir. 1971) 15, 31

Wolin v. Port of New York Authority, 392 F.2d 83 (2nd Cir. 1968) 13

Constitutional Provisions:

United States Constitution
First Amendment 2, 8, 9, 10, 11, 12, 13, 14, 15, 20, 25, 28, 29, 30, 32, 33
Fourteenth Amendment 2
Twenty-sixth Amendment 13

PAGE

Statutes:

28 U.S.C. §1254(1) 1
42 U.S.C. §1983 2

Other Authorities:

Adelson, SDS (New York 1972) 225-264 21
Am. Jur., Judgments, §213 19
Monaghan, *First Amendment "Due Process,"* 83 Harv. L. Rev. 518 (1970) 20
Wright, *The Constitution on the Campus,* 22 Vand. L. Rev. 1027 (1969) 15

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-452

CATHERINE J. HEALY, *et al.*,

Petitioners,

—v.—

F. DON. JAMES, *et al.*,

Respondents.

BRIEF FOR PETITIONERS

Opinions Below

The two District Court opinions in this case, one requiring a hearing, the other reviewing it, appear respectively at 311 F. Supp. 1275 and 319 F. Supp. 113. They are set out in the Petition for Certiorari, pp. 40a and 50a. The opinion of the Court of Appeals is reported at 445 F.2d 1122. It is set out in the Petition for Certiorari, p. 1a.

Jurisdiction

The judgment of the United States Court of Appeals for the Second Circuit was entered on July 15, 1971. Certiorari was granted on December 7, 1971. The jurisdiction of this Court rests on 28 U.S.C. §1254(1).

Question Presented

Whether the First Amendment forbids the president of a state college from refusing official recognition to a student political organization, when the decision is based only upon undifferentiated fear or apprehension of disturbance.

Statute and Constitutional Provisions Involved

The statute involved is section one of the Civil Rights Act of 1871, 42 U.S.C. §1983. The constitutional provisions are the First and Fourteenth Amendments.

Statement of the Case

Petitioners, students at Central Connecticut State College (CCSC), met together in September of 1969 and decided to request the college administration to grant official recognition to what they styled "a local chapter of Students for a Democratic Society" that they wished to form (A. 20). Official recognition, had it been granted, is a prerequisite to meeting anywhere on campus (A. 16-17),[1] and would have allowed petitioners to use the college's bulletin boards and newspaper for SDS notices, to use campus buildings for meetings (H. pp. 17-18; 46; 47),[2] and to seek funds from student government (A. 95).

Petitioners' application came before the Student Affairs Committee, a student-faculty body, on October 2, 1969. The application in full read as follows (A. 13):

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[1] The symbol "A" refers to the printed separate Appendix.

[2] The symbol "H" refers to the transcript of the first hearing before Judge Clarie which is part of the Record filed with the Clerk of the Court.

What follows is a brief statement of purpose of the group of students at CCSC who would like to form a local chapter of Students for a Democratic Society (S.D.S.).

1. Because the university is intended to be the arena of education, where there is an unfettered exchange of ideas, S.D.S. would provide a *forum* of discussion and self-education for students developing an analysis of American society and institutions, including higher education, and the world situation in general.

2. Because it is felt that ideas without parallel in deeds are empty and ephemeral, and that no area of life exists in a vacuum and unrelated to all other areas of life, S.D.S. would provide *an agency* for integrating thought with action so as to bring about constructive changes in the university, in American life, and the world.

3. Because of the responsibility of all peoples for the welfare of others, S.D.S. would provide a *coordinating body* for relating the problems of leftist students and other groups, such as the student body as a whole, the working class, the black populace or whatever other individuals or groups in fact or potentially in accord with the purposes of the CCSC chapter of S.D.S.

The Committee, concerned with the violent reputation of SDS' national organization, asked what the ties of the local chapter to the national would be. Petitioners replied that the local chapter would be "completely independent" and that the name was being used only because it "brings to mind the type of organization [they] wish to bring across, that is a left-wing organization which will allow students interested in such to express themselves." The committee also asked petitioners whether

they could envision SDS interrupting a class. They replied that it was impossible to say (A. 95). When asked if they would "respond to issues of violence as other SDS chapters have," they replied that "our action would have to be dependent upon each issue" (A. 95).

On October 13, 1969, after having received a formal statement from petitioners that CCSC-SDS would not be "under the dictates of any National organization" (A. 92), the committee approved the application by a vote of 6 to 2, with the explicit condition "that the Committee would consider the immediate suspension of the local chapter if its activities, programs, and functions were incompatible with those of the College" (A. 99-100).

Respondent James, the President of the University, declined to accept the advice of the committee and, on October 30, 1969, denied recognition to the chapter. He felt that "the statement of purpose to form a local chapter of Students for a Democratic Society carries full and unmistakable adherence to at least some of the major tenets of the national organization, loose and divided though that organization may be" (A. 15). When petitioners and others met a week later in a coffee shop at the Student Center on campus to discuss the respondent James' decision, he interpreted this as a meeting of CCSC-SDS and ordered the meeting to disband (A. 16-17). Petitioners complied without protest.

On February 24, 1970, petitioners began this lawsuit to seek official campus recognition of CCSC-SDS. After a hearing on a motion for preliminary injunction, Judge Clarie ordered the college to hold a hearing to resolve ambiguities about the relationship between CCSC-SDS and

the national organization. He felt that "[t]he term itself 'local chapter,' strongly infers some sort of affiliation with a more extensive parent organization. . . ." Pet. for Cert., p. 62a. The hearing was held May 19th and 25th, 1970. For their part, petitioners submitted a statement signed by five of their number that CCSC-SDS "shall have no connection whatsoever to the structure of an existing national organization, or organizations, bearing the name Students for a Democratic Society" (A. 101-102),[3] and their faculty advisor testified that SDS on a campus where he has been a student, two or three years previously, had "no connection whatsoever" with any outside group (A. 68-69). Over petitioners' counsel's objection, the hearing officer introduced into evidence Hearings held by the House of Representatives' Committee on Internal Security concerning Students for a Democratic Society to show provisions in the SDS national constitution requiring adherence to national policies by local affiliates.[4]

On July 10, 1970, Respondent James again denied petitioners' application (A. 103-105). He stated that the hearing had failed to resolve the ambiguity concerning the connection between CCSC-SDS and the national SDS organization. He failed to understand, he said, how the group could be totally free of any influence from an organization whose name it used. This, he apparently felt, justified imputing to the local the motives of the national. He concluded that recognition "would be contrary to the orderly process of change and would be contrary to the philosophy and lawful mission of this College" (A. 105).

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[3] The hearing officer volunteered that he did not question the credibility of these petitioners (A. 76). But see note 10, *infra*.

[4] See note 11, *infra*.

Petitioners returned to Judge Clarie, who had retained jurisdiction in the suit, and moved to reject James' findings. Judge Clarie denied their motion and, on the ground that petitioners had "not sustained their burden of demonstrating that their identifying with the national corporate name of the SDS permits them to function with absolute freedom from the dictates, influence and image of the national organization, notwithstanding their verbal protests to the contrary," Pet. for Cert., p. 48a, granted summary judgment to respondents. The United States Court of Appeals for the Second Circuit affirmed.[5]

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[5] The Circuit also reasoned that the failure "to submit a copy of their charter or by-laws" (Pet. for Cert., p. 20a) supported respondent James' denial of the application. Since James did not rely on this as a reason for denying the petition—nor did the district court—it is improper for a reviewing court to adduce it as a reason to justify James' decision. *Trister* v. *University of Mississippi*, 420 F.2d 499, 503 (5th Cir. 1969); *Johnson* v. *Branch*, 364 F.2d 177, 181 (4th Cir. 1966), *cert. denied*, 385 U.S. 1003 (1967).

The majority's reference to "disruptive tactics" by petitioners' counsel seems to underlie its cryptic conclusion that petitioners "failed to avail themselves of the procedural due process accorded to them." Pet. for Cert., p. 20a. The characterization of counsel's behavior is unfair, particularly since the hearing officer congratulated everyone, including counsel, for their civility (A. 50-51), and it is necessary to pursue the point at some length so that this Court is not misled about the heart of the controversy in this case.

The Court of Appeals labelled four incidents "disruptive tactics": (1) an objection to tape-recording of the hearing, rather than a stenographic transcript; (2) an objection to respondent James's absence; (3) two exclamations of exasperation: that "[t]his [hearing] is really terrific" and that he, counsel, was "outraged;" and (4) calling of respondent James as a witness and asking him whether he had made any prejudgment of the case and whether he would be influenced by petitioners' statement that they would have no connection with the SDS national office. *Id.* at pp. 10a-13a.

(1) The objection to tape recording was made on the ground that it would be impossible to tell until after the hearing whether any portions of the testimony had been missed (A. 33). There is no indication in the record that counsel's action was in bad faith, and, in fact, one portion of the typed transcript of the tape indicates

Summary of Argument

I.

Tinker v. *Des Moines Independent Community School District*, 393 U.S. 503 (1969), held that "First Amendment rights . . . are available . . . to students." *Tinker*, which involved junior high school and high school students, should

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that a question from the hearing officer was too unclear to be transcribed (A. 73).

(2) Although the district court opinion stated that a hearing officer could hold the hearing in place of respondent James (*id.* at p. 61a), petitioners could legitimately desire respondent James, who would make the final decision, to hear their argument personally.

(3) From the cold record, one could reasonably conclude that the hearing officer himself precipitated counsel's exasperation. The hearing officer refused to allow respondent James to answer any of counsel's questions. He admitted, for example, that James was counsel's witness but ruled that his was "an improper line of questioning for a client's witness" (A. 61). While he claimed that the hearing was "not a legal proceeding" (A. 33), he continually made final evidentiary decisions that juggled the rules so that only that evidence favorable to James's eventual decision was received. The record is rife with examples of unprincipled decisions fleshed out with ill-used legal terminology. The hearing officer ruled questions about respondent James's prejudgment "irrelevant and immaterial" (A. 58); he ruled that evidence before a Congressional Committee could not be objected to as hearsay (A. 71); citing the advice of "our counsel," he ruled that petitioners' written statement that they had no tie to the SDS national and changing the name of the proposed organization to eliminate the objectionably ambiguous term "local chapter" was an "amended application" that was "not germane" because "not introduced in the federal record" (A. 60)—apparently reasoning that the ambiguities that the federal judge found in the record could only be resolved by the evidence then before the federal judge. In face of these bizarre rulings, one could hardly say that the lawyer was being intemperate, much less disruptive, for saying "this is really terrific" or that he was "outraged."

(4) While the procedure of calling respondent James personally to the stand as a witness was perhaps unorthodox, it appeared to

be applied more broadly to the case at bar which involves university students. Petitioners' First Amendment rights must be measured by the same standards that are applied to adults at large. *Tilton* v. *Richardson*, 403 U.S. 672 (1971); *Eisner* v. *Stamford Board of Education*, 440 F.2d 803, 808 n. 5 (2nd Cir. 1971). Correlatively, when a university is acting as a municipality, it should be required to conform to the same constitutional norms as its governmental counterparts.

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be necessary in this case. In the first place, counsel wanted the record to reflect that respondent James had made public statements in a speech to the Lions Club which indicated that he had already decided the case, without having held the hearing on which he was to base his decision. Confronting an administrative officer with his own damning statements is certainly not graceful—it is bound to produce a hostile witness—but neither is prejudgment graceful. James appeared voluntarily at the hearing; given this opportunity, counsel proceeded to examine him with the directness that any competent trial lawyer would have practiced in the same situation. Faced with a difficult tactical problem—how to get evidence of prejudice into the record—he used an unusual technique, and his aim seems to have been to reach the truth, not to disrupt the hearing. But counsel had another, more basic reason for wanting to deal directly with respondent James. The hearing officer had effectively stifled petitioners—especially by ruling that their statement disavowing ties to the SDS was not germane. Counsel wanted to cut through the hearing officer's grudging procedure and find out what James thought of the statement, whether he would consider it, and whether he would make any judgments about petitioners' credibility.

Perhaps most important of all, at no time during the hearing, as spirited as the interchanges between counsel and hearing officer seem to have been, did the hearing officer object to counsel's conduct or indicate that he thought counsel's tactics disruptive. The record ought not be distorted now to make it appear that counsel wilfully disrupted the hearing. The line between argument and disruption is sometimes a fine one—compare *In re McConnell*, 370 U.S. 230, 235-36 (1962) with *Parmelee Transportation Co.* v. *Keeshin*, 294 F.2d 310, 314 (7th Cir. 1961) *rev'd*, 370 U.S. 230 (1962)—and an appellate court should be loath to condemn on the basis of a cold, written record.

The First Amendment has been applied on both secondary school and university campuses in a wide variety of cases by other courts, both before and after *Tinker*. Such cases have included prohibitions against disciplining students for distributing unofficial newspapers on school grounds or from wearing arm bands, like the Tinkers, in school for the purpose of political protest. Regulations prohibiting distribution of anti-war leaflets have been struck down as overbroad and the offense of "misconduct", contained in a university regulation, has been held unconstitutionally vague. University administrators' efforts to interfere with the appearance of controversial guest speakers on campus have been uniformly declared unconstitutional. Two cases have affirmatively applied the First Amendment to set aside refusals, such as in this case, to recognize student organizations.

II.

Though the basis for the respondents' decision to deny petitioners' recognition as a local chapter of SDS does not emerge with clarity, either from the administrative record or from the opinions below, it seems that the college president anticipated disruption should SDS come to his campus, and was not satisfied with petitioners' assertions that they would not be affiliated with national SDS. The Second Circuit affirmed, ostensibly on the ground that the "plaintiffs failed to avail themselves of the procedural due process accorded to them . . . ." Upon analysis, the decision actually is based upon agreement with the substance of the findings by the president of the college. The Court of Appeals decision can also be read as putting on petitioners the burden of proving that they would not engage in vio-

lence or disruption. Such a holding is contrary to the decisions in *Speiser* v. *Randall*, 375 U.S. 513 (1958) and *Freedman* v. *Maryland*, 380 U.S. 51 (1965).

The evidence was insufficient to show that petitioners would engage in violence or disruption. The only evidence introduced on behalf of the college was a few arbitrary selections from hearings held by the House Internal Security Committee on the Students for a Democratic Society. Petitioners, for their part, asserted time and again that their local group would be entirely independent of the national SDS.

Assuming for argument's sake that the record adequately establishes that some SDS groups have employed violence, *Scales* v. *United States*, 367 U.S. 203 (1961) and *Noto* v. *United States*, 367 U.S. 290 (1961), make it clear that "guilt" cannot be imputed to petitioners.

III.

The denial of recognition to petitioners' local SDS group was a forbidden prior restraint. *Bantam Books* v. *Sullivan*, 372 U.S. 58 (1963); *Carroll* v. *President and Commissioners*, 393 U.S. 175 (1968); *New York Times* v. *United States*, 403 U.S. 713 (1971).

IV.

On this record the First Amendment requires that petitioners' local SDS group be granted official recognition because respondents' denial of such recognition was based upon nothing more than an "undifferentiated fear or apprehension of disturbance" *Tinker* v. *Des Moines Independent School Board, supra.*

Shelton v. *Tucker*, 364 U.S. 479 (1960), *United States* v. *Robel*, 389 U.S. 258 (1967) and *Aptheker* v. *United States*, 378 U.S. 500 (1964), stand for the proposition that respondents must use less drastic means to secure a valid interest in being free of illegal disorders. One constitutional alternative available to the college administrators is punishment of individual students, pursuant to valid college rules, for their part in any illegal activity which might occur. Withdrawal of recognition and injunctions against illegal conduct are two additional alternatives for dealing with illegality, should it occur.

ARGUMENT

I.

The First Amendment, as applied by this Court and lower federal courts in other campus cases, requires that petitioners' SDS group be granted official recognition.

Tinker v. *Des Moines Independent Community School District*, 393 U.S. 503, 506 (1969), the touchstone for this case, held explicitly that the First Amendment applied to the campus. "First Amendment rights, applied in the light of the special characteristics of the school environment, are available to . . . students."

On the facts of this case, which involves university students, *Tinker* states only the bare minimum of First Amendment rights available to petitioners. We believe that petitioners' speech, assembly and associational rights should be held to exceed those extended to the junior high school and high school students who were the parties in *Tinker* for

there is no reason either in logic or experience to measure petitioners' First Amendment rights by any different standard than is applied to adults at large.

Mr. Chief Justice Burger, writing for the plurality in *Tilton* v. *Richardson,* 403 U.S. 672 (1971), found a constitutionally significant distinction between elementary and secondary school students on the one hand, and university students on the other. In that case, the statute which authorized federal funds to finance the building of academic facilities on the campuses of church-related colleges was challenged as an unconstitutional establishment of religion. One of the reasons relied upon by the Chief Justice to support the constitutionality of the statute, as distinguished from impermissible enactments designed to finance elementary and secondary parochial schools, see *Lemon* v. *Kurtzman,* 403 U.S. 602 (1971), was that "college students are less impressionable and less susceptible to religious indoctrination." 91 S. Ct. at 2099. Judge Kaufman, in *Eisner* v. *Stamford Board of Education,* 440 F.2d 803, 808 n. 5 (2nd Cir. 1971), drew the same distinction. In addition, he thought that regulations affecting speech must meet a higher First Amendment burden in the university, not only because of "the greater maturity of the students there," but also because of "the larger size of university campuses, and the tendency of students to spend a greater portion of their time there . . . " In effect, Judge Kaufman recognized that a university campus is a community of adults in every sense of the word and therefore entitled to a full portion of constitutional rights. Correlatively, when a university is acting as a municipality—as legislature, police force, prosecutor, judge and jury—it should be required to conform to the same constitutional norms as its other governmental

counterparts. See *Niemotko* v. *Maryland,* 340 U.S. 268 (1951) (a park); *Edwards* v. *South Carolina,* 372 U.S. 229 (1963) (state capitol grounds); *Wolin* v. *Port of New York Authority,* 392 F.2d 83 (2nd Cir. 1968) (municipal bus station); *Marsh* v. *Alabama,* 326 U.S. 501 (1946) (a company town); *Amalgamated Food Employees* v. *Logan Valley Plaza Inc.,* 391 U.S. 308 (1968) (a shopping center); and *Brown* v. *Louisiana,* 383 U.S. 131 (1966) (a library).

The Twenty Sixth Amendment, which enfranchised virtually every university student, further supports the claim that the maturity of college-age students has constitutional significance. The Amendment increases the burden on college administrators to comply with the First Amendment, lest they interfere with the free exchange of political ideas and, consequently, with the process by which the decision is made about how members of the electorate will cast their ballots.

The First Amendment has been applied on both secondary school and university campuses in a wide variety of cases by other courts, both before and after *Tinker.*

High school students have been protected by the courts when they were disciplined for distributing unofficial newspapers on school grounds. *Eisner* v. *Stamford Board of Education, supra; Scoville* v. *Board of Education of Joliet Township,* 425 F.2d 10 (7th Cir. 1970); *Sullivan* v. *Houston Independent School District,* 307 F. Supp. 1328 (S.D. Tex. 1969).

Students other than the Tinkers have been protected by the courts when they too wore armbands in school in order silently to protest the war, *Butts* v. *Dallas Independent*

School District, 436 F.2d 728 (5th Cir. 1971), or to protest education policies, *Aguirre* v. *Tahoka Independent School District,* 311 F. Supp. 664 (N.D. Tex. 1970).

Overbroad regulations prohibiting distribution of anti-war leaflets have been struck down on behalf of both a junior high school student, *Riseman* v. *School Committee of the City of Quincy,* 439 F.2d 148 (1st Cir. 1971), and a non-student on a university campus, *Jones* v. *Board of Regents,* 436 F.2d 618 (5th Cir. 1970).

The offense of "misconduct," as contained in university regulations has been held unconstitutionally vague. *Soglin* v. *Kaufman,* 418 F.2d 163 (7th Cir. 1969).

University administrators' efforts to interfere with the appearance of controversial guest speakers on campus have been uniformly declared unconstitutional. E.g., *Pickings* v. *Bruce,* 430 F.2d 595 (8th Cir. 1970) ("militant" views on race relations); *Brooks* v. *Auburn University,* 296 F. Supp. 188 (M.D. Ala. 1969) (Rev. William Sloan Coffin); *Molpus* v. *Fortune,* 311 F. Supp. 240 (N.D. Miss. 1970), affirmed 432 F.2d 916 (5th Cir. 1970) (student revolt leader); *Smith* v. *University of Tennessee,* 300 F. Supp. 777 (E.D. Tenn. 1969) (Dick Gregory and Dr. Timothy Leary); *Snyder* v. *Board of Trustees,* 286 F. Supp. 927 (N.D. Ill. 1968) (Communist Party member); *Dickson* v. *Sitterson,* 280 F. Supp. 486 (M.D. N.C. 1968) (Executive Director of National Committee to Abolish the House Un-American Activities Committee and Director of the American Institute of Marxist Studies).

Two cases have affirmatively applied the First Amendment to set aside refusals, such as in this case, to recognize student organizations. *ACLU of Virginia* v. *Radford*

College, 315 F. Supp. 893 (W.D. Va. 1970); and *University of Southern Mississippi Chapter of the Mississippi Civil Liberties Union* v. *University of Southern Mississippi,* —— F.2d —— (5th Cir. 1971).

To be sure, not every court has vindicated the asserted constitutional rights of students, see e.g., *Estaban* v. *Central Missouri State College,* 415 F.2d 1077 (8th Cir. 1969); and *Guzik* v. *Drebus,* 431 F.2d 594 (6th Cir. 1970), *cert. denied,* 401 U.S. 948 (1971); but since *Dixon* v. *Alabama State Board of Education,* 294 F.2d 150 (5th Cir. 1961), ". . . for good or for ill, the Constitution has come to the campus." Wright, *The Constitution on the Campus,* 22 Vand. L. Rev. 1027, 1033 (1969).[6]

This case gives the Court the opportunity to implant the First Amendment firmly on the college campus. The fact that it arises at a time when the memory of turmoil on campus is still fresh in mind, and that it involves SDS, which is equally fresh in mind, cannot deter the Court from recognizing the essentiality of the constitutional principles put forward on petitioners' behalf. The right of these petitioners to secure recognition for their SDS group is a central portion of the freedom to which Mr. Justice Frankfurter referred when he noted that a free society depends upon free universities. *Sweezy* v. *New Hampshire,* 354 U.S. 234, 262 (1957). If President James' arbitrary decision to ban SDS from his campus is permitted to stand,

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[6] Professor Wright clearly believes it is "for good":

> It is my judgment, on balance, that the application of constitutional principles to universities has its costs, but these are tolerable costs if they are viewed without exaggeration. The costs are considerably outweighed by the benefits. 22 Vand. L. Rev. at 1086.

our universities will be less free. But, again, as Mr. Justice Frankfurter noted:

> A university is characterized by the spirit of free inquiry, its ideal being the ideal of Socrates—"to follow the argument where it leads." This implies the right to examine, question, modify or reject traditional ideas and beliefs. Dogma and hypothesis are incompatible, and the concept of immutable doctrine is repugnant to the spirit of a university. *Sweezy* v. *New Hampshire, supra* at 262-263.

II.

Denial of petitioners' application for official recognition of Students for a Democratic Society was based upon both insubstantial evidence and constitutionally impermissible inferences.

A. *Reasons for Refusing Recognition.*

The President of Central Connecticut State College—both before and after hearing—has persistently refused official recognition of the local chapter of SDS proposed by petitioners.

After petitioners' application was approved by a 6-2 vote of the Student Affairs Committee in October, 1969 (A. 100), President James denied recognition on the grounds that (A. 15-16):

> (1) ". . . a local chapter of Students for a Democratic Society carries full and unmistakable adherence to at least some of the major tenets of the national organization, loose and divided though that organization may be."
>
> (2) "The published aims and philosophy of the Students for a Democratic Society, which include disrup-

> tion and violence, are contrary to the approved policy (by faculty, students, and administration) of Central Connecticut State College."
>
> (3) Petitioners' statement that " 'CCSC Students for a Democratic Society are not under the dictates of any National organization' in no way clarifies why if a group intends to follow the established policy of the college, they wish to become a local chapter of an organization which openly repudiates such a policy."

Shortly afterwards, in December, President James reported his denial of recognition to SDS in the college's alumni publication (A. 23-24).

> I cannot sanction an organization that openly advocates the destruction of the very ideals and freedoms upon which the academic life is founded. In denying the SDS official recognition, I have emphasized that the philosophies, actions and violence of that organization are counter to the official policy of the College.

After the hearing which was ordered by the district court, President James gave the following reasons for finally denying recognition:

> (1) Failure to clarify petitioners' "affiliation and/or association with the national organization of Students for a Democratic Society (a/k/a SDS) and/or any of its splinter groups" (A. 103).
>
> (2) ". . . various activities of local SDS Chapters, Regional Headquarters of the SDS, the National offices, and others associated with the organization . . . would be a disruptive influence at CCSC" (A. 104).
>
> (3) ". . . intransigence of counsel . . . " (A. 105).[7]

[7] See note 5, *infra*.

One cannot say from all of these explanations, what the precise reason was for President James' decision to deny recognition. He

The district court concluded, without reference to any specific facts of record, that "The evidence clearly and unequivocally discloses that the philosophy and purpose of the national organization advocate the violent overthrow of existing government institutions, through the medium of disruptive anarchistic force" (Pet. for Cert. 48a-49a), and that "the applicants have not sustained their burden" of disassociating themselves "from the dictates, influence and image of the national organization" (*id.* at 48a).

The Court of Appeals disposed of petitioners' claims by holding that "plaintiffs failed to avail themselves of the procedural due process accorded to them and thus prevented the President of the College and the administration from applying that policy to plaintiffs' application so as to implement that undoubted authority of the college officials to control student conduct, consistent with fundamental constitutional safeguards" (*id.* at 20a).

Although the Court of Appeals opinion thus rests on what seems at first blush to be a procedural ground, logic requires the conclusion that it actually rests on substantive grounds (notwithstanding the court's statement that it is ". . . neither necessary nor appropriate, upon this record, to reach the substantive constitutional questions, . . ." *Id.* at 22a). It does so because petitioners' alleged failure to "avail themselves" of procedural due process consisted,

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speaks of "disruption and violence" in his initial decision, of advocacy in his report to the alumni, and of "disruptive influence" in his final decision. If mere advocacy was the actual basis for decision, this case would clearly be controlled by *Brandenburg* v. *Ohio*, 395 U.S. 444 (1969), which would compel reversal. But this brief proceeds on the assumption that it was something more than anticipation of advocacy which impelled James' decision—that it was "disruption and violence" which he anticipated.

according to the court's opinion, in failing to clarify their relationship with national SDS and in failing to say whether they would resort to violence or disruption (*Id.* at 20a-21a). But these alleged failings in fact implicate the very constitutional issues which the court said it did not have to reach, namely, "the questions whether the national SDS organization was prone to violence and, if so, whether denial of recognition to plaintiffs' local organization—identified by name with the national—violated plaintiffs' constitutional right of assembly . . ." (Pet. for Cert., p. 22a, n. 39).[8]

The Court of Appeals decision can also be read as putting on petitioners the burden of proving that they would not engage in violence or disruption and that they would have no connection with national SDS. (The district court so held. Pet. for cert. 47a.) But such a holding would clearly be inconsistent with this Court's decisions concern-

[8] To affirm James' denial of recognition by charging petitioners with the failure to be cooperative at the hearing, is the equivalent of granting the school a default judgment. But since even a default judgment must ultimately rest on the assertion of adequate facts to support a cause of action, the Court of Appeals must have been satisfied that the school had adequately proved that national SDS was prone to violence and that there would be some kind of relationship between national SDS and petitioners' local group; and the Court of Appeals must also have been satisfied that these two facts could be linked by imputation of SDS' violence to petitioners. Any other analysis would mean that a party could win a lawsuit, upon default of the other side, even without a legally cognizable claim or without the assertion of facts adequate to support a cognizable claim. But "it is a general rule that a judgment by default must be justified by the pleadings. Such a judgment may not be rendered where the pleadings of the plaintiff omit averments essential to the showing of a cause of action." Am. Jur., Judgments, §213. Consequently, the petitioners may and indeed do claim both that the evidence was insufficient to support the school's factual claims, and that the theory of imputation was constitutionally impermissible.

ing the procedures which must be employed in First Amendment case. *Speiser* v. *Randall,* 357 U.S. 513 (1958); *Freedman* v. *Maryland,* 380 U.S. 51 (1965). See also Monaghan, *First Amendment "Due Process,"* 83 Harv. L. Rev. 518 (1970). In *Speiser* v. *Randall,* this Court overturned a requirement that taxpayers prove non-advocacy of violent overthrow of the government, holding that "the State [must] bear the burden of persuasion" that First Amendment activities can be inhibited. 357 U.S. at 526. And in *Freedman* v. *Maryland,* the Court held that the first procedural prerequisite of any attempt to impose a prior restraint is that "the burden of proving that the film is unprotected expression must rest on the censor." 380 U.S. at 58. As Judge Smith, dissenting below, correctly said, " . . . it appears to me to have been established beyond doubt that the burden of providing a justification for this type of prior restraint rests squarely on the shoulders of those who seek to impose it" (Pet. for Cert., p. 38a).

B. *The Evidence Was Insufficient to Show That Petitioners Would Engage in Violence or Disruption.*

Keeping in mind the high degree of proof which is demanded by the First Amendment before the state may penalize individuals by finding them guilty by association [*DeJonge* v. *Oregon,* 299 U.S. 353 (1936); *Scales* v. *United States,* 367 U.S. 203 (1961); *Keyishian* v. *Board of Regents,* 385 U.S. 589 (1967); *Baird* v. *Arizona,* 401 U.S. 1 (1971); *Re Stolar,* 401 U.S. 23 (1971], it must be concluded that the proof was insufficient to establish that petitioners' SDS group would engage in violence or disruption.

At the time of petitioners' initial application for recognition, when they appeared before the Student Personnel

Committee, they were asked about affiliation with national SDS and replied, "The chapter does not affiliate with the national organization; we will be completely independent" (A. 94). They were then asked, "Why does the local chapter care to use the national name if it will not affiliate?"; they answered, "Because the name brings to mind the type of organization we wish to bring across, that is a left-wing organization which will allow students interested in such to express themselves" (A. 94-95). At their second appearance before the Student Affairs Committee, petitioner Tester said there was "no such thing as an SDS National; that individuals in the organization wanted to keep a loose arrangement and wanted to be able to pick ideas from several of the factioned groups, he stated that the concept of SDS exists in the minds of those who run it" (A. 98).[9] In addition, petitioners' faculty advisor, Dr. Brown, testified at the hearing that, as a recent student at the University of Michigan, he knew that the SDS chapter there "had absolutely no connection whatsoever with any other outside organization" (A. 68-69). Finally, at the hearing following the district court remand, petitioners submitted a signed statement which unequivocally stated that Students for a Democratic Society of Central Connecticut State College "shall have no connection whatsoever to the structure of an existing national organization or organizations bearing the name Students for a Democratic Society. Fur-

[9] At the very time petitioners applied for recognition, SDS was in the middle of an ideological struggle among a variety of factions. One group called itself the Revolutionary Youth Movement (RYM); a split from RYM called itself RYM II. A third faction called itself the Worker-Student Alliance. Adelson, SDS (New York 1972) 225-264. RYM soon came to call itself The Weathermen and "gave up trying to call itself SDS at all." *Id.* at 245. It is not entirely clear who SDS was in the Fall of 1969, nor is it any clearer now. *Ibid.*

thermore, the organization shall be unaffiliated with any other organization" (A. 102).[10]

In the face of this evidence, the college introduced four exhibits consisting of hearings before the House Internal Security Committee entitled "Investigations of Students for a Democratic Society," Parts 1A, 1B, 3A, and 6B.[11]

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[10] The Hearing Officer, Dean Judd, took the position for some inexplicable reason that this statement was inadmissible. He said, "I see fit not to acknowledge it as a matter for discussion in this case since the only basis upon which the College can conduct the hearing is on what Judge Clarie ordered . . ." (A. 45). Petitioners' attorney tried futilely to explain that, since the subject matter of petitioners' signed statement involved one of the precise questions which Judge Clarie asked to have clarified, he ought to entertain it (A. 36-42; 45-47).

[11] Curiously enough, these exhibits were introduced by the Hearing Officer to make the college's case, such as it was. Surely, to play the dual role of prosecutor and hearing officer offends due process. *In Re Murchison*, 349 U.S. 133 (1955); *In Re Oliver*, 333 U.S. 257 (1948); *Tumey* v. *Ohio*, 273 U.S. 510 (1927). Petitioners do not press the point, however, since it was not raised below. But petitioners would suggest that the arrangement reflects a certain insensitivity to constitutional principle which might be said to characterize as well the President's final decision.

There is another curious point to be made of these exhibits. The Hearing Officer, in introducing them, made reference to them only for the purpose of trying to show some kind of formal relationship between national SDS and its chapters by reference to specific pages (A. 46-50, 70). When petitioners' attorney asked whether they were being introduced to "identif[y] the character" of SDS, the Hearing Officer replied, "I'm not here to answer your questions as a witness" (A. 68). Nonetheless, President James used those documents as the entire basis for showing that SDS had been involved in disruptions in Columbus, Ohio, and George Washington University, and that he would therefore deny petitioners' application for recognition for that reason (A. 104-105).

One can only speculate what petitioners' response might have been had they understood that these Committee hearings were being used to establish SDS' violent proclivities: possibly awe at having to take on the United States Congress; possibly they might

Contrasted to the evidence put forward by petitioners, including their stated purpose in organizing a local SDS Chapter (*supra*, p. 3) and their denial of any affiliation with national SDS, there is insufficient evidence to support the denial of recognition. As Judge Smith, dissenting below, said, "The appellees have not come forward with any evidence as to a threat of substantial disruption of the operation of the school by the appellants" (Pet. for Cert. 38a).

C. *It Is Impermissible to Infer From the Evidence in the Record That Petitioners Would Engage in Disruption and Violence.*

Assuming for argument's sake that the record adequately establishes that some SDS groups have employed violence as an instrument of their political program, or even that spokesmen for national SDS[12] advocated and practiced violence as a means of achieving their political objectives, petitioners cannot be penalized by inference from those beliefs or practices. That is the clear lesson of *Scales* v. *United States*, 367 U.S. 203, 220 (1961) and *Noto* v. *United States*, 367 U.S. 290 (1961), which require that conviction for membership in an illegal organization must rest upon an unequivocal showing of "active" membership, "knowledge of the Party's illegal advocacy, and a specific intent to bring about violent overthrow." The Court's opinion in *Scales* took special cautionary note of the dangers

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have done what they did anyhow—deny any relationship with national SDS. Our thesis, however, is that such evidence proves nothing as to these petitioners in this case.

[12] But see note 9, *supra*, which points out the several competing factions which were wrestling for control of national SDS at the time of petitioners' application for recognition.

to freedom involved in imputing guilt to an individual because of his associations (367 U.S. at 227-228):

> It must indeed be recognized that a person who merely becomes a member of an illegal organization, by that "act" alone need be doing nothing more than signifying his assent to its purposes and activities on one hand, and providing, on the other, only the sort of moral encouragement which comes from the knowledge that others believe in what the organization is doing.
>
> * * * * *
>
> [The membership statute is constitutional when it] is found to reach only "active" members having also a guilty knowledge and intent, and which therefore prevents a conviction on what otherwise might be regarded as merely an expression of sympathy with the alleged criminal enterprise, unaccompanied by any significant action in its support or any commitment to undertake such action.

Since there was no such necessary evidence which related to the particular petitioners, the inference of guilt by the college administrators was entirely baseless and violated constitutional standards. *Baird* v. *State Bar of Arizona*, 401 U.S. 1, 9 (1971) ("mere membership in an organization can never, by itself, be sufficient ground for a state's imposition of civil disabilities"); Re Stolar, 401 U.S. 23, 28-29 (1971) ("nor may the State penalize petitioner solely because he personally . . . 'espouses illegal aims' ").

III.

The denial of recognition was a forbidden prior restraint.

No matter how one looks at this case, even from the perspective of the Second Circuit, one must conclude that petitioners' application for recognition of CCSC-SDS was denied because the administrators thought that SDS on campus meant trouble.[13] Perhaps so, but as we put forward below, the only constitutionally permissible recourse was to grant recognition and take appropriate steps when and if members of CCSC-SDS engaged in, or presented a clear and present danger of engaging in conduct which could constitutionally be forbidden under valid college rules. To nip SDS in the bud, as was done here, was to employ a forbidden prior restraint upon First Amendment rights including the right of assembly, *DeJonge* v. *Oregon, supra,* and the right of association:

> Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly. *NAACP* v. *Alabama,* 357 U.S. 449, 460 (1958).

See also *Bates* v. *City of Little Rock,* 361 U.S. 516, 523 (1960).

As this Court said in *Bantam Books* v. *Sullivan,* 372 U.S. 58, 70 (1963), and reaffirmed only last year in *New York*

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[13] Other political organizations having been granted official recognition by the college (A. 18), the petitioners may of course litigate this discriminatory denial of their application. *Shuttlesworth* v. *Alabama,* 394 U.S. 147 (1969).

Times v. *United States,* 403 U.S. 713 (1971), "any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity." The special vice of prior restraints is that they suppress "the precise freedom which the First Amendment sought to protect against abridgement." *Carroll* v. *President and Commissioners,* 393 U.S. 175, 181 (1968). What the prior restraint in this case meant, was that no group possessing the special political perspective of SDS would be allowed to meet on campus for any purpose, including quiet discussion of political issues, or efforts to convert others to their political beliefs through conversation and debate. In fact, an informal group of fifteen students, including some petitioners, sat together in a coffee shop on campus to discuss President James' initial denial of recognition to SDS. They were then and there ordered to disperse by two college administrators, one of whom produced a written memorandum informing the group that that very meeting, and any others on campus by SDS, were forbidden because "CCSC-SDS is not a duly recognized college organization" (A. 16-17, 23).

In short, SDS' political beliefs were totally suppressed on campus by virtue of the denial of recognition. That, we suggest, is a most successful prior restraint—and abhorrent to our notions of freedom.

The speaker-ban cases, all of which, like the case at bar, involve college administrators' fear of disorder, are compelling instances of prior restraints in similar circumstances which have been struck down without exception.

Snyder v. *Board of Trustees,* 286 F. Supp. 927 (N.D. Ill. 1968), held unconstitutional a state statute which prohib-

ited the use of any facilities of the University of Illinois to "any subversive, seditious, and un-American organization." In addition to finding the statute vague and overbroad, the court also found it to be a prior restraint.

> The Clabaugh Act stifles communication even before it has taken place. It does not regulate merely the form of the speech—the time, place and manner of speaking. It classifies and regulates speech on the basis of the content, the very ideas to be expressed. By thus acting as a prior restraint on the substance of the contemplated speech, the Clabaugh Act raises the spectre of censorship. 286 F. Supp. at 936.

In *Brooks* v. *Auburn University*, 296 F. Supp. 188 (M.D. Ala. 1969), the court issued an injunction requiring the University to allow Rev. William Sloan Coffin to speak on campus. The University prohibited his appearance on the ground that he might advocate breaking the law and because he was a convicted felon.

> The State of Alabama cannot . . . regulate the content of the ideas students may hear. To do so is illegal and thus unconstitutional censorship in its rawest form. 296 F. Supp. at 196.

In *Molpus* v. *Fortune*, 311 F. Supp. 240 (N.D. Miss. 1970), officials of the University of Mississippi banned a speaker from appearing on campus because he had been a leader in a student revolt at another school which had resulted in damage to buildings, disruption of classes, and intimidation of faculty and students. After a hearing the court concluded that the speaker's appearance would not present a "clear and present danger to the orderly operation of the University." *Id.* at 249. See also *Smith* v. *University of Tennessee*, 300 F. Supp. 777 (E.D. Tenn.

1969); *Pickings* v. *Bruce*, 430 F.2d 595 (8th Cir. 1970); *Buckley* v. *Meng*, 34 Misc. 2d 467, 230 NYS2d 924 (Sup. Ct. 1962).

All of these cases reflect the well established First Amendment doctrine that speech, on the campus as well as off, cannot be curtailed either because the authorities dislike its content or because of their undifferentiated apprehension of disorder. The Court emphasized the especially dangerous features of prior restraints in *Carroll* v. *President and Commissioners of Princess Anne*, 393 U.S. 175, 180-181 (1968):

> Ordinarily, the State's constitutionally permissible interests are adequately served by criminal penalties imposed after freedom to speak has been so grossly abused that its immunity is breached. The impact and consequences of subsequent punishment for such abused are materially different from those of prior restraint. Prior restraint upon speech suppresses the precise freedom which the First Amendment sought to protect against abridgment.

The precise freedoms suppressed in this case include the right of petitioners and other students to meet anywhere on the campus to discuss politics from the ideational point of view represented by SDS, as well as the right to communicate their political ideas, as represented in the various doctrines advocated by SDS, to other students through the campus newspaper, on campus bulletin boards, and at public meetings. Such an effective suppression of political ideas, accomplished by the device of denying recognition to CCSC-SDS, must be struck down in this case as a gross burden on the First Amendment.

IV.

On this record, the First Amendment requires that CCSC-SDS be granted official recognition.

A. *Denial of Recognition Was Based on "Undifferentiated Fear or Apprehension of Disturbance."*

The respondents have a valid interest in the subject matter of this case. That interest is circumscribed by the metes and bounds of *Tinker*, as that opinion variously expressed it: to be free of "disruptive conduct," or "aggressive, disruptive action," or "interference, actual or nascent, with the school's work or of collision with the rights of other students to be secure and to be left alone," or "material and substantial interference with the requirements of appropriate discipline in the operation of the school," or "material and substantial interference with school work or discipline," or behavior which "materially disrupts classwork or involves substantial disorder or invasion of the rights of others."[14] Petitioners run afoul of none of those standards. To the contrary, it is the administration of Central Connecticut State College which has breached that part of *Tinker* which explicitly prohibits invasions of First Amendment freedoms which rest upon "undifferentiated fear or apprehension of disturbance . . ." 393 U.S. at 508. There can be no doubt of that, for all the administrative proceedings revolved around the assumption that where goeth SDS, so goeth disorder. That propo-

[14] We have put forward the claim that these several formulations, articulated in a case involving high school and junior high school students, would have to be applied more narrowly in university-level cases. But we have no quarrel with those standards in this particular case because loose as they are, petitioners have offended none of them.

sition was certainly not proven, and one does not know if it could be, but the administration wasn't going to take any chances—even though it meant trampling the First Amendment underfoot. In its "undifferentiated fear or apprehension," the administration just swept aside petitioners' affirmation that their purpose was to "provide a forum of discussion and self-education for students developing an analysis of American society and institutions . . . [to] provide an agency for integrating thought with action so as to bring about constructive changes . . . [and to] provide a coordinating body for relating the problems of leftist students and other groups, such as the student body as a whole, the working class, [and] the black populace . . . " (A. 92).[15] For all we know, the special political perspective of SDS is now absent from campus. The administration may enjoy that condition, but the Court must acknowledge that it was achieved at the expense of fundamental First Amendment doctrine, for "the constitutional guarantees of free speech and free press do not permit a state to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed

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[15] The minutes of the October 2, 1969 meeting of the Student Personnel Committee reports the following colloquy (A. 95):

> Q. How would you respond to issues of violence as other SDS chapters have? A. Our action would have to be dependent on each issue.
>
> Q. Would you use any means possible? A. No I can't say that; would not not know until we know what the issues are.

These responses are as predictably vague as the questions. By themselves they mean nothing, and were not relied upon as the basis for the James' denial of recognition. At worst, they can be read to reject outright renunciation of violence under all circumstances. But as the Court said in *Noto* v. *United States*, 367 U.S. 290, 297-298 (1961), "the mere abstract teaching . . . of the moral propriety or even moral necessity for a resort to force and violence is not the same as preparing a group for violent action and steeling it to such action."

to inciting or producing imminent lawless action and is likely to incite or produce such action." *Brandenburg* v. *Ohio, supra* at 447.

Finally, *University of Southern Mississippi Chapter of the Mississippi Civil Liberties Union* v. *University of Southern Mississippi,* —— F.2d —— (5th Cir. 1971), establishes that respondents' action here cannot be justified on their undifferentiated fear of disorder. In that case, college administrators refused officially to recognize a student ACLU chapter because they feared that the ACLU's "litigious orientation" would result in "frivolous, vexatious, and harassing actions to impede the legitimate function of a university." The Court of Appeals ordered the University to recognize the student chapter. It held (Slip. Op. 6-7):

> We think it far more compatible with free expression to relegate the University to its rights if the litigative activities of the Chapter should turn out to be carried on with disruptive intentions and do result in substantial disruption to the life of the University. In that case, the recognition granted the chapter could be challenged and withdrawn in a fair proceeding based upon evidence of actual, and not vaguely predictive misconduct.

B. *Respondents Must Use Less Drastic Means to Secure Its Valid Interest in Being Free of Illegal Disorders.*

In a series of decisions this Court has held that, even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgement must be viewed in the light

of less drastic means for achieving the same basic purpose. *Shelton* v. *Tucker,* 364 U.S. 479, 488 (1960).

See also *United States* v. *Robel,* 389 U.S. 258, 265-266 (1967); *Aptheker* v. *United States,* 378 U.S. 500, 508-509 (1964).

The most constitutionally tenable alternative which the college may invoke in order to achieve its lawful objective, is the punishment of individual students, pursuant to valid college rules, for their part in illegal activity. See, for example, *Barker* v. *Hardway,* 399 F.2d 638 (4th Cir. 1968), *cert. denied,* 394 U.S. 905 (1969); and *Estaban* v. *Central Missouri State College,* 415 F.2d 1077 (8th Cir. 1969). That measure is not only far less drastic, in First Amendment terms, than banning speech and assembly because of an undifferentiated fear that they will break out into disorder, but also satisfies the general notion, implemented by the due process clause, that punishment must follow, not precede, an offense.

Withdrawal of an organization's recognition, and injunctions against illegal conduct which is clearly and presently threatened, are two other possible means of securing order which are less drastic than the one employed in this case. The former raises some conceptual difficulties because of the special problems which always attend efforts to impose sanctions on an organization *qua* organization in the First Amendment area, for unless all members of an organization participate in illegal activity, withdrawal of recognition necessarily affects First Amendment activity of innocent persons. See, e.g., *Communist Party* v. *Subversive Activities Control Board,* 367 U.S. 1 (1961). The latter alternative always raises factual, and sometimes procedural,

difficulties (see, e.g., *Carroll* v. *President and Commissioners, supra*), but that is not to say that there cannot be some set of circumstances where an injunction would be constitutionally permissible under even the most stringent First Amendment test. Thus, the Court can consider these two additional alternatives as being less drastic than the prior restraint imposed in this case.

Since these less drastic means were available to respondents, the denial of recognition to CCSC-SDS, which resulted in the direct suppression of speech and assembly, must be declared unconstitutional. As Mr. Chief Justice Hughes said in *DeJonge* v. *Oregon, supra* at 364-365, though rights may be abused, "... intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed."

CONCLUSION

For the reasons set out above, the decision below should be reversed and the respondents should be ordered to recognize the Central Connecticut State College chapter of Students for a Democratic Society.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

NO. 71-452

CATHERINE J. HEALY, et al.,

Petitioners,

vs.

F. DON JAMES, etc., et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF ON BEHALF OF THE AMERICAN ASSOCIATION OF PRESIDENTS OF INDEPENDENT COLLEGES AND UNIVERSITIES, *AMICUS CURIAE*

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES ii

INTEREST OF THE *AMICUS CURIAE* 1

THE IMPORTANCE OF THIS CASE 2

SUMMARY OF ARGUMENT 4

ARGUMENT 5

I. The Evidence in This Case Fully Justified the Finding of the College and the Courts Below that the Proposed SDS Chapter Presented a Threat of Disruption and Violence 5

II. Educational Institutions Possess the Power To Protect Themselves and Their Personnel From Disruption and Violence 8

III. To Introduce the "Clear and Present Danger" Standard Into the Operations of a University Would Completely Undermine Its Educational Functions 10

A. Constitutional Principles Should Be Applied In The Light Of The Distinctive Purposes And Functions Of A University 11

B. Neither This Nor Other Courts Have Applied The "Clear And Present Danger" Standard To Universities 13

C. The College's Decision Not To Grant Plaintiffs Official Recognition Was Entirely Reasonable And Should Accordingly Be Upheld 15

CONCLUSION 17

TABLE OF AUTHORITIES

CASES	PAGE
American Civil Liberties Union of Virginia v. *Radford College*, 315 F. Supp. 893 (W.D. Va. 1970)	10
Anastaplo, In Re, 366 U.S. 82 (1961)	4, 6
Baird v. *State Bar of Arizona*, 401 U.S. 1 (1971)	9
Burnside v. *Byars*, 363 F.2d 744 (5th Cir. 1966)	13, 15
Cole v. *Trustees of Columbia University*, 300 F. Supp. 1026 (S.D.N.Y. 1969)	6
Cox v. *Louisiana*, 379 U.S. 559 (1965)	14
Dixon v. *Alabama State Board of Education*, 294 F.2d 150 (5th Cir. 1961), certiorari denied, 368 U.S. 930 (1961)	9
Eisner v. *Stamford Board of Education*, 440 F.2d 803 (2d Cir. 1971)	14
Epperson v. *Arkansas*, 393 U.S. 97 (1968)	5, 8, 15
Esteban v. *Central Missouri State College*, 415 F.2d 1077 (8th Cir. 1969)	7, 8, 14, 15
Ferrell v. *Dallas Independent School District*, 392 F.2d 697 (5th Cir. 1968), certiorari denied, 393 U.S. 856 (1968)	13
Goldberg v. *Regents of the University of California*, 248 Cal. App. 2d 867, 57 Cal. Rptr. 463 (1967)	15
Interstate Circuit, Inc. v. *United States*, 306 U.S. 208 (1939)	7
Keyishian v. *Board of Regents of New York*, 385 U.S. 589 (1967)	11
Konigsberg v. *State Bar of California*, 366 U.S. 36 (1961)	4, 6
Law Students Research Council v. *Wadmond*, 401 U.S. 154 (1971)	4, 6

PAGE

Norton v. *Discipline Committee of East Tennessee State University*, 419 F.2d 195 (6th Cir. 1969) 16

Sellers v. *Regents of the University of California*, 432 F.2d 493 (9th Cir. 1970) 9

Sill v. *Pennsylvania State University*, 318 F. Supp. 608 (M. D. Penn. 1970) 15

Stolar, In Re, 401 U.S. 23 (1971) 9

Sweezy v. *New Hampshire*, 354 U.S. 234 (1957) 11

Sword v. *Fox*, 446 F.2d 1091 (4th Cir. 1971), certiorari denied, ... U.S. .... (Dec. 14, 1971) 5, 8, 14

Tinker v. *Des Moines Community School District*, 393 U.S. 503 (1969) 4, 5, 8, 9, 10, 13, 16

University of Southern Mississippi Chapter of the Mississippi Civil Liberties Union v. *University of Southern Mississippi*, ... F.2d .... (5th Cir. 1971) 10

Waugh v. Board of Trustees of the University of Mississippi, 237 U.S. 589 (1915) 4, 8, 9

OTHER AUTHORITIES

Annotation, 10 A.L.R. 3d 389 (1966) 9

Hand, *On Receiving An Honorary Degree*, published in *The Spirit of Liberty* (Vintage 1959) 12

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

NO. 71-452

CATHERINE J. HEALY, et al.,

Petitioners,

vs.

F. DON JAMES, etc., et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF ON BEHALF OF THE AMERICAN ASSOCIATION OF PRESIDENTS OF INDEPENDENT COLLEGES AND UNIVERSITIES, *AMICUS CURIAE*

Interest of the *Amicus Curiae*

The American Association of Presidents of Independent Colleges and Universities is a corporation whose members are the presidents of more than 170 independent colleges and universities located throughout the United States. The Association is organized pursuant to the Business Corporation Act of the District of Columbia, and is authorized by its charter to take public positions on matters of concern to its members and the educational community. Because of the important issues presented by this case, the filing of an *amicus curiae* brief has been authorized by the Association's Board of Directors, and the consents of the parties have been filed with the Clerk of this Court.

The Importance of This Case

The issues presented by this case are of great importance to every educational institution in the country. The relevant facts are simple and require only summary recapitulation in this brief.

Plaintiffs are students at Central Connecticut State College. In September, 1969 they requested the College to grant official recognition to a local chapter of the Students for a Democratic Society ("SDS") (App. 20). They professed that the chapter would not be "under the dictates of any National organization" (App. 92), and their application set forth a statement of purposes and certain additional information required by College procedures (App. 13). Official recognition would have entitled plaintiffs to a variety of privileges including the privilege of seeking financial support from the student government. (App. 16-17, 95).

On October 16, 1969 plaintiffs' application was approved by the College's Student Affairs Committee by a 6-2 vote and submitted to President James (App. 99-100). On October 30 President James denied the application on the ground that:

> The published aims and philosophy of the Students for a Democratic Society, which include disruption and violence, are contrary to the approved policy (by faculty, students, and administration) of Central Connecticut State College which states:
>
> > "Students do not have the right to invade the privacy of others, to damage the property of others, to disrupt the regular and essential operation of the college, or to interfere with the rights of others."
>
> The further statement . . . that "CCSC Students for a Democratic Society are not under the dictates of any

> National organization" in no way clarifies why if a group intends to follow the established policy of the College, they wish to become a local chapter of an organization which openly repudiates such a policy. (App. 15-16).

Plaintiffs were accordingly informed that they could not hold meetings on College property (App. 16-17). They then brought this action in the United States District Court for the District of Connecticut. On April 24, 1970, the District Court directed the College to hold an administrative hearing designed, among other things, to permit plaintiffs to clarify both the nature of their proposed organization and its relationship with the national SDS.[1]

The administrative hearing ordered by the District Court was held on May 19 and 25, 1970. Although plaintiffs were given a full opportunity to present evidence, they refused to clarify the relationship of the proposed local chapter to the national SDS. They presented nothing more than an insignificant name change and the assertion that they would not be connected with the "structure" of the national SDS (App. 101-2). They in no way disclaimed adherence to the *policies* of the national organization, even after a showing that (1) the national SDS expects local chapters to operate within its policies (App. 79), and (2) that the policies and operations of the national SDS placed heavy emphasis on acts of disruption and violence (App. 85-91). Plaintiffs themselves refused to say whether or not the local chapter would engage in such acts (App. 95). At the end of the hearing President James adhered to his earlier denial of official recognition (App. 103-5), and his decision was affirmed by the courts below.[2]

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[1] *Healy* v. *James,* 311 F.Supp. 1275 (D. Conn. 1970).

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[2] *Healy* v. *James,* 319 F.Supp. 113 (D. Conn. 1970), affirmed, *Healy* v. *James,* 445 F.2d 1122 (2d Cir. 1971).

It is readily apparent that the issues raised by these facts present questions of great public importance. The basic issue, of course, is whether it was improper for the College to deny official recognition and support to plaintiffs' proposed local chapter of the SDS. Implicit in that issue, however, is a whole spectrum of questions concerning the constitutional powers of public educational institutions. And these questions are not limited to colleges and universities, but arise at all levels of public education.

SUMMARY OF ARGUMENT

I. The central fact in this case is that the College acted not from "undifferentiated fear or apprehension of disturbance", but because of the threat of disruption and violence. The acts and policies of the national SDS demonstrate its disruptive nature, and it was further shown that the national SDS expects local chapters to conform to its policies. Under these circumstances the College was at the very least entitled to ask plaintiffs whether they themselves would renounce acts of disruption and violence. Cf. *Law Students Research Council* v. *Wadmond*, 401 U.S. 154 (1971); *In Re Anastaplo*, 366 U.S. 82 (1961); *Konigsberg* v. *State Bar of California*, 366 U.S. 36 (1961). And when plaintiffs expressly declined to do so the College was fully justified in refusing to sanction and support the proposed local chapter.

II. Although it is not disputed that students at state colleges are entitled to exercise constitutional rights, it is equally well settled that student behavior is subject to reasonable regulation. *Tinker* v. *Des Moines Community School District*, 393 U.S. 503 (1969); *Waugh* v. *Board of Trustees of the University of Mississippi*, 237 U.S. 589 (1915). And this is particularly true when the regulation is designed to prevent disruptive conduct which is not immunized by constitutional guarantees of freedom of

speech. In this case the College's decision was designed to prevent just such disruptive conduct and in no way impeded expression of plaintiffs' personal beliefs.

III. In considering the propriety of particular regulations, the courts have taken into account the specialized nature and functions of educational institutions. *Sword* v. *Fox*, 446 F.2d 1091 (4th Cir. 1971). A university must not only be permitted to maintain an atmosphere of academic freedom for the benefit of all its members, but is entitled to set standards of conduct which are higher than the minimum required in the surrounding community. For these reasons the courts have not mechanically adopted the "clear and present danger standard" urged by plaintiffs, but instead have permitted regulation based on the reasonable anticipation of disruptive conduct. *Tinker* v. *Des Moines Community School District, supra,* 393 U.S. 503 (1969). The courts have further recognized that the appropriateness of particular regulations is a discretionary question for the school authorities subject to only limited judicial review. *Epperson* v. *Arkansas,* 393 U.S. 97 (1968). The decision of the College was in complete conformity with these principles and should accordingly be upheld.

ARGUMENT

I. THE EVIDENCE IN THIS CASE FULLY JUSTIFIED THE FINDING OF THE COLLEGE AND THE COURTS BELOW THAT THE PROPOSED SDS CHAPTER PRESENTED A THREAT OF DISRUPTION AND VIOLENCE.

In considering the propriety of the decision of Central Connecticut State College, one fact is of central importance. That fact is that the College acted not because of "undifferentiated fear or apprehension of disturbance", but because of a reasoned refusal to sanction an organization dedicated

to disruption and violence. The violent nature of the national SDS has been set forth at length in the *amicus* brief of the Americans for Effective Law Enforcement and is not disputed by plaintiffs themselves. As the Court remarked in *Cole* v. *Trustees of Columbia University*, 300 F. Supp. 1026, 1028 (S.D.N.Y. 1969):

> In accordance with its aims and purposes, [SDS] has both directly and indirectly participated in campus disorders which have resulted from the spread of student unrest.

It was this organization with which plaintiffs sought to become affiliated; and it is absurd to contend that its violent history should have been ignored by the College. Quite the contrary, and even apart from the fact that the national SDS expects local chapters to conform to its policies (App. 79), the College had both the right and the duty to ask plaintiffs whether, at the very least, they themselves would agree to refrain from disruptive and violent acts. Cf. *Law Students Research Council* v. *Wadmond*, 401 U.S. 154 (1971); *In Re Anastaplo*, 366 U.S. 82 (1961); *Konigsberg* v. *State Bar of California*, 366 U.S. 36 (1961). But that is precisely what plaintiffs here expressly refused to do:

> "Q. How would you respond to issues of violence as other S.D.S. chapters have?
> "A. Our action would have to be dependent upon each issue.
> "Q. Would you use any means possible?
> "A. No I can't say that; would not know until we know what the issues are.
>
> • • • • •
>
> "Q. Could you envision the S.D.S. interrupting a class?
> "A. Impossible for me to say." (App. 95)

The foregoing answers reflect not only insensitivity to the legitimate interests of the College but a failure to acknowledge minimum standards of appropriate conduct. Under these circumstances it was not improper for the

College to determine that plaintiffs' chapter presented a threat of disruption.[3]

Furthermore, plaintiffs' own testimony completely rebuts their contention (Brief, 19) that the lower courts' decisions were "the equivalent of . . . a default judgment." In the first place, this contention is utterly false to the extent it is meant to imply that plaintiffs were not given an opportunity to present evidence. Quite the contrary, plaintiffs were provided with a full administrative hearing governed by elaborate standards designed to allow them a complete opportunity to clarify the issues.

Secondly, both courts below carefully examined the evidence offered at the administrative hearing. And both courts held that under the circumstances it was not unreasonable to require plaintiffs to come forward with evidence which would satisfy the College's legitimate interest in refusing to sponsor disruption and violence. When plaintiffs failed to produce such evidence, the decision against them was entirely justified.[4]

---

[3] Although plaintiffs did offer evidence that an SDS chapter at *another* campus had no connection with any outside group (App. 68-69), that evidence was not responsive to the central question of plaintiffs' *own* affiliations. Much less did it bear on whether plaintiffs proposed to engage in disruption, a subject on which plaintiffs were evasive. In short, as this Court said in *Interstate Circuit, Inc.* v. *United States*, 306 U.S. 208, 226 (1939):

> "The production of weak evidence when strong is available can lead only to the conclusion that the strong would have adverse. . . . Silence then becomes evidence of the most convincing character."

[4] It is worth noting that none of this has anything whatever to do with plaintiffs' contention (Brief, 19-20) that the ultimate burden of proof rested upon the College. Whatever the merits of that contention may be, it is completely irrelevant since the lower courts merely held that plaintiffs had failed to rebut the College's *prima facie* showing of threatened disruption. This holding obviously involved a factual determination by both courts which should not be upset unless it is clearly erroneous. *Esteban* v. *Central Missouri State College*, 415 F.2d 1077, 1083 (8th Cir. 1969).

In short, the question presented to the courts below was *whether it was unreasonable for the College to require, as a condition of official recognition and support, that students wishing to become affiliated with a violent organization themselves renounce disruption and violence.* Both courts answered that question in the negative, and their decisions were in complete accord with constitutional principles governing state educational institutions.

II. EDUCATIONAL INSTITUTIONS POSSESS THE POWER TO PROTECT THEMSELVES AND THEIR PERSONNEL FROM DISRUPTION AND VIOLENCE.

Although it is completely undisputed that students at state universities are entitled to exercise constitutional rights, it is equally well settled that a university has the authority to prescribe reasonable regulations governing student behavior. As this Court recently stated in *Tinker* v. *Des Moines Community School District,* 393 U.S. 503, 507 (1969):

> On the other hand, the Court has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools.

See also *Epperson* v. *Arkansas,* 393 U.S. 97 (1968); *Sword* v. *Fox,* 446 F.2d 1091 (4th Cir. 1971); *Esteban* v. *Central Missouri State College,* 415 F.2d 1077 (8th Cir. 1969).

This authority is clearly designed to allow academic officials to prevent disruptive conduct, and nothing in *Tinker* suggests that it is inapplicable to student organizations. Quite the contrary, in *Waugh* v. *Board of Trustees of the University of Mississippi,* 237 U.S. 589 (1915), this Court held that a state's interest in preserving a proper

educational environment justified a statute prohibiting college students from belonging to a fraternity:

> It is said that the fraternity . . . is a moral and of itself a disciplinary force. This need not be denied. But whether such membership makes against discipline was for the state of Mississippi to determine. It is to be remembered that the University was established by the state, and is under the control of the state, and the enactment of the statute may have been induced by the opinion that membership . . . divided the attention of the students, and distracted from that singleness of purpose which the state desired to exist in its public educational institutions. It is not for us to entertain conjectures in opposition to the views of the state, and annul its regulations upon disputable considerations of their wisdom or necessity. 237 U.S. at 596-7.

The principles announced in *Waugh* have been repeatedly applied by the courts, see Annotation, 10 A.L.R. 3d 389 (1966), and the case was referred to by Mr. Justice Black, dissenting in *Tinker*, as expressing the "true principles on this whole subject."[5] 393 U.S. at 522. And Mr. Justice Black's remarks were made in a case which presented conduct described by the Court as "closely akin to 'pure speech' ". 393 U.S. at 505. Here, by contrast, the College acted—not to suppress speech—but because it was faced with the threat of disruptive conduct not subject to constitutional protection:

---

[5] The classic doctrine expressed in *Waugh* does not, of course, reflect modern concepts of *procedural* due process. See, e.g. *Dixon* v. *Alabama State Board of Education*, 294 F.2d 150 (5th Cir. 1961). That issue is not involved in this case, however, since the District Court afforded plaintiffs a full panoply of procedural rights. In addition, it is worth noting that unlike the situation in *Baird* v. *State Bar of Arizona*, 401 U.S. 1 (1971) and *In Re Stolar*, 401 U.S. 23 (1971), cited by plaintiffs (Brief, 20, 24), the inquiry here dealt specifically with plaintiffs' intended *acts* and had nothing to do with their personal beliefs. Cf. *Sellers* v. *Regents of the University of California*, 432 F.2d 493, 498 (9th Cir. 1970).

> Conduct by the student, in class or out of it, which for any reason—whether it stems from time, place, or type of behavior—materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech. *Tinker* v. *Des Moines School District, supra,* 393 U.S. at 513.

It is this threat of disruptive conduct, moreover, which renders authorities dealing with other organizations completely irrelevant to the present case. In neither *American Civil Liberties Union of Virginia* v. *Radford College,* 315 F. Supp. 893 (W.D. Va. 1970), nor *University of Southern Mississippi Chapter of the Mississippi Civil Liberties Union* v. *University of Southern Mississippi,* ... F.2d ... (5th Cir. 1971), on which plaintiffs rely (Brief, 14-15), were the courts presented with an organization having a demonstrably violent history. This case, by contrast, presents precisely such an organization, and the College's decision was expressly designed to deal with the resulting threat. Nothing in that decision inhibited in any way the expression of plaintiffs' personal beliefs.

III. TO INTRODUCE THE "CLEAR AND PRESENT DANGER" STANDARD INTO THE OPERATIONS OF A UNIVERSITY WOULD COMPLETELY UNDERMINE ITS EDUCATIONAL FUNCTIONS.

Plaintiffs suggest, however, that official recognition should not have been denied without a showing that their proposed organization presented a "clear and present danger" to the College (Brief, 27, 32). They further contend (Brief, 8) that "when a university is acting as a municipality, it should be required to conform to the same constitutional norms as its governmental counterparts." These contentions completely ignore both the unique function of a university and the decisions of this Court.

A. Constitutional Principles Should Be Applied In the Light Of The Distinctive Purposes and Functions Of A University.

In the application of constitutional principles a university presents a unique situation. At the very least, of course, it must be permitted to maintain an atmosphere of academic freedom for the benefit of *all* its members. *Keyishian* v. *Board of Regents*, 385 U.S. 589 (1967). As this Court said in *Sweezy* v. *New Hampshire*, 354 U.S. 234, 250 (1957):

> The essentiality of freedom in the community of American universities is almost self-evident .... Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.

It is not sufficient, however, merely to preserve an atmosphere of academic freedom. Quite the contrary, a university has the obligation to set standards which are superior to those of the surrounding community. And this is true because a university is a distinctive and fragile institution expressly devoted to dispassionate inquiry and the orderly transmission of knowledge:

> [A university] has not only a legal and moral right but an educational obligation to raise its standards *above* that of the community whose law often expresses no more than the lowest common denominator of what is necessary to prevent men from breaking the social peace. It can therefore require both of its students and faculty conformity with a code of manners, speech, and conduct, provided it is not unreasonable or unjust, *higher* than what obtains in the market place. Hook, *Academic Freedom and Academic Anarchy*, 195 (Cowles Book Co. 1969) (Emphasis in original).

Because of its important and specialized function, therefore, university regulations need not and should not be precisely identical to those adopted by other governmental agencies. Quite the contrary, activities which may be acceptable—or at least not subject to prohibition—when used on the street corner may be entirely unacceptable in a university. This is true not only because an educational atmosphere presupposes a higher degree of decorum than the minimum required on the street, but also because it has long been recognized that direct political entanglements are fundamentally inconsistent with the objectivity necessary in a scholarly community:

> You may take Martin Luther or Erasmus for your model, but you cannot play both roles at once; you may not carry a sword beneath a scholar's gown, or lead flaming causes from a cloister. Luther cannot be domesticated in a university. You cannot raise the standard against oppression, or leap into the breach to relieve injustice, and still keep an open mind to every disconcerting fact, or an open ear to the cold voice of doubt. I am satisfied that a scholar who tries to combine these parts sells his birthright for a mess of pottage; that, when the final count is made, it will be found that the impairment of his powers far outweighs any possible contribution to the causes he has espoused. If he is fit to serve in his calling at all, it is only because he has learned not to serve in any other, for his singleness of mind quickly evaporates in the fires of passions, however holy. Learned Hand, *On Receiving An Honorary Degree*, published in *The Spirit of Liberty*, 105 (Vintage 1959).

For these reasons plaintiffs' attempt to correlate universities and municipalities is completely untenable. A university is *not* a municipality, does not have the same functions, and has quite properly been permitted to adopt specialized regulations to prevent interference with its scholarly and educational function.

B. Neither This Nor Other Courts Have Applied The "Clear And Present Danger" Standard To Universities.

It is precisely this recognition of the distinctive function of a university which has led the courts *not* to adopt, in educational contexts, the "clear and present danger" standard urged by plaintiffs. Quite the contrary, the courts have been quick to point out that constitutional principles developed in other contexts cannot be mechanically applied to the schools:

> First Amendment rights, *applied in the light of the special characteristics of the school environment,* are available to teachers and students. *Tinker* v. *Des Moines School District, supra,* 393 U.S. at 506 (Emphasis added).

And in *Tinker* this Court went on to hold that the relevant test was not "clear and present danger", but whether:

> The school authorities had *reason to anticipate* that the wearing of the armbands would *substantially interfere with the work of the school or impinge upon the rights of other students.* 393 U.S. at 509 (Emphasis added).

The *Tinker* test is explicitly designed to reflect the unique characteristics of an educational environment. It is neither new nor extraordinary, but is fully consistent with earlier federal decisions. See, e.g. *Burnside* v. *Byars,* 363 F.2d 744 (5th Cir. 1966). For example, as Judge Godbold said in his concurring opinion in *Ferrell* v. *Dallas Independent School District,* 392 F.2d 697, 704-5 (5th Cir. 1968):

> A school may not stifle dissent because the subject matter is out of favor. Free expression is itself a vital part of the educational process. *But in measuring the appropriateness and reasonableness of school regulations against the constitutional protections of the First and Fourteenth Amendments the courts must give full credence to the role and purposes of the schools and . . . careful recognition to the differences between what*

C. The College's Decision Not To Grant Plaintiffs Official Recognition Was Entirely Reasonable And Should Accordingly Be Upheld.

Finally, plaintiffs assert (Brief, 31-33) that the College should have adopted some other method of dealing with disruption and violence. It is well settled, however, that the appropriateness of particular regulations is a discretionary question for the school authorities subject to only limited judicial review. As this Court said in *Epperson* v. *Arkansas*, 393 U.S. 97, 104 (1968):

> By and large, public education in our Nation is committed to the control of state and local authorities. *Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values.* (Emphasis added).

Such a result is entirely reasonable in the light of the school authorities' educational expertise and familiarity with local conditions. It is, moreover, the result uniformly reached by the lower federal courts. See, e.g. *Esteban* v. *Central Missouri State College*, 415 F.2d 1077 (8th Cir. 1969); *Burnside* v. *Byars*, 363 F.2d 744 (5th Cir. 1966); *Sill* v. *Pennsylvania State University*, 318 F.Supp. 608 (M.D. Penn. 1970). And the reasons which support it are succinctly stated in *Goldberg* v. *Regents of the University of California*, 248 Cal. App. 2d 867, 880, 57 Cal. Rptr. 463, 472 (1967):

> Historically, the academic community has been unique in having its own standards, rewards and punishments. Its members have been allowed to go about their business of teaching and learning largely free of outside interference. To compel such a community to recognize and enforce precisely the same standards and penalties that prevail in the broader social community would serve neither the special needs and interests of the

> educational institutions, nor the ultimate advantages that society derives therefrom. *Thus, in an academic community, greater freedoms and greater restrictions may prevail than in society at large, and the subtle fixing of these limits should, in a large measure, be left to the educational institution itself.* (Emphasis added).

The question presented by this case can therefore not be resolved by talismanic appeals to First Amendment slogans developed for other situations, but requires consideration of the particular facts presented to Central Connecticut State College. Here the College was faced with a violent organization whose local adherents refused, even verbally, to renounce acts of disruption and violence. We submit that under these circumstances it was not unreasonable to deny plaintiffs official College recognition and support.

Finally, plaintiffs' contention (Brief, 25-28) that they were subjected to an unconstitutional "prior restraint" is fully dealt with in respondent's brief. Suffice it to say here that this Court's remarks in *Tinker* anticipated not just the punishment, but also the prohibition, of disruptive conduct. Such a result is entirely sensible, since it would be the height of unreason to require a college to wait until its classes are disrupted or its buildings occupied or burned. And plaintiffs' complaint (Brief, 25) that their proposed organization was "nipped in the bud" has, for these precise reasons, been expressly rejected:

> It is not required that the college authorities delay action against the inciters until after the riot has started and buildings have been taken over and damaged. The college authorities had the right to nip such action in the bud and prevent it in its inception. *Norton* v. *Discipline Committee of East Tennessee State University*, 419 F.2d 195, 199 (6th Cir. 1969).

CONCLUSION

In short, this is not a complicated case. Its resolution turns on three propositions which are not only reasonable in themselves, but which are fully consistent with the decisions of this Court. Those propositions are:

1. That a university may adopt specialized regulations designed to promote its educational goals, and may protect itself and its personnel by refusing to sanction disruptive and violent conduct;

2. That at the very least a university may expect that students seeking its official support agree to refrain from disruption and violence;

3. That this is particularly so when the students involved seek to become affiliated with an organization which in both word and deed has committed itself to violence, and which further expects its local chapters to conform to its own practices and policies.

We submit that any result other than that reached by the courts below would effectively render educational institutions impotent to preserve their academic freedom as defined by this and other courts. The judgment below should be affirmed.

Respectfully submitted,

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF OF AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC. AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS.

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TABLE OF CONTENTS.

	PAGE
Table of Authorities	ii
Interest of the Amicus Curiae	1
Summary of Argument	3
Argument	4
I. The Scope of This Brief—the Application of the First Amendment Should Reflect the Realities	4
II. The History of Violence and Disruption of the SDS Should Not Be Ignored	7
III. The Application of the First Amendment to Colleges and Universities Should Be Made With Due Regard for the Practical Problems Involved in Campus Disruptions	14
A. The Absolutist Construction of the First Amendment Suggested by Petitioners Disregards the Realities of the Result of Campus Violence	14
B. College Presidents Are Quitting in Despair	17
C. Our Colleges and Universities Cannot Bear the Monetary Cost of Campus Violence	19
IV. The Court Should Affirm an Application of the First Amendment to the University Which Permits Enjoyment of Free Expression by More Than a Few Intolerant Activists	22
A. What Exists Here Is an Opportunity to Define a Balanced View of the First Amendment	22
B. An Absolutist View of the First Amendment Can, in Reality, Stifle Freedom of Speech and Assembly Upon the Campus	23
C. It Is Not a Prior Restraint on the Rights of Individuals or Groups to Require Them to Conform to the Orderly Framework of Free Speech	27
Conclusion	30

Table of Authorities.

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Asher v. Regents of the University of Wisconsin, 318 F. Supp. 82 (E. D. Wis. 1971) 26

Belk v. Chancellor of Washington University, No. 70C151 (1) (E. D. Mo. 1970) 26

Callison v. United States, 413 F. 2d 133 (9th Cir. 1969) 6

Eisner v. Stamford Board of Education, 440 F. 2d 803 (2nd Cir. 1971) 6

Esteban v. Central Missouri State College, 415 F. 2d 1077 (8th Cir. 1969) 6

Cholmakjian v. Board of Trustees of Michigan State University, 315 F. Supp. 1335 (W. D. S. D. Mich. 1970) 28

Keyishian v. Board of Regents, 385 U. S. 589 (1967) .. 24

Healy v. James, 445 F. 2d 1122 (2d Cir. 1971) 3, 5, 6

Healy v. James, 211 F. Supp. 1275 (D. Conn. 1970) 5

Healy v. James, 319 F. Supp. 113 (D. Conn. 1970) 5

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McAlpine v. Reese, 309 F. Supp. 136 (E. D. Mich. 1970) 26

Tinker v. Des Moines School District, 393 U. S. 503 (1969) 6, 24

Sellers v. Regents of University of California, 432 F. 2d 493 (9th Cir. 1970) 6

Sweezy v. New Hampshire, 354 U. S. 234 (1951) 24

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Anatomy of a Revolutionary Movement: "Students for a Democratic Society". Union Calendar No. 750, 91st Cong. 2nd Session, House Report No. 91-1565 ..... 8, 9, 10, 11, 12, 13, 14, 19

Reader's Digest, February, 1972 "Hard Times Hit The Campus", by Rowan and Mazie, p. 201..... 20

Riots, Criminal and Civil Disorders, College Campus Disorders, Second Interim Report of the Committee on Government Operations, United States Senate, made by its Permanent Subcommittee on Investigations, March 23, 1971, 92nd Cong. 1st Sess. Senate Report No. 92-42..... 12, 13

U. S. News and World Report, "Communism and the New Left" Washington, D. C. 1970..... 13

U. S. News and World Report: "Why College Presidents Are Quitting", August 30, 1970, p. 30..... 17, 18

Wall Street Journal "Insuring the Campus Grows More Costly; Confrontation Looms" October 16, 1970, p. 4..... 20

Books.

Methvin: The Riot Makers, Arlington House..... 13

Michener: Kent State, What Happened and Why, Random House, 1971..... 13

Other Authorities.

Petitioners' Brief in the Instant Case..... 14, 15

Petitioners' Brief in the Court of Appeals..... 7, 27

Respondents' Brief in the Court of Appeals..... 7

> *are reasonable restraints in the classroom and what are reasonable restraints on the street corner.* (Emphasis added).

It is therefore not surprising that the same distinctions have been repeatedly applied by the lower federal courts since *Tinker*. See, e.g. *Eisner* v. *Stamford Board of Education*, 440 F.2d 803 (2d Cir. 1971); *Esteban* v. *Central Missouri State College*, 415 F.2d 1077 (8th Cir. 1969). As the Court stated in *Sword* v. *Fox*, 446 F.2d 1091, 1096-97 (4th Cir. 1971):

> In determining whether a college regulation restricting demonstrations is reasonable, the Courts must take into consideration both *"the special characteristics of the school environment" and that the regulation of student conduct is ordinarily the prerogative of the college authorities, with judicial intervention only when the circumstances are such as to "directly and sharply implicate basic constitutional values." For these reasons, the "precedents about the meaning of the first amendment in other areas of life can (not) be indiscriminately transferred to the university setting"*. . . . In testing any college regulation for reasonableness under these criteria, the Courts, it should be emphasized, are not concerned with "whether such rules are wise or expedient but merely whether they are a reasonable exercise of the power and discretion of the school authorities. (Citations omitted) (Emphasis added).

It is accordingly clear that, contrary to plaintiffs' contention, the courts have not mechanically equated universities with other governmental institutions. And in the light of the specialized functions of a university there is no reason whatever why any court should do so.[6]

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[6] It is worth noting that colleges and universities are not the only government institutions which require, and have received, specialized constitutional treatment. It has long been held, for example, that the specialized functions of the courts justify restrictions different from those prevailing in other areas open to the public. See, e.g. *Cox* v. *Louisiana*, 379 U.S. 559 (1965).

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971.

No. 71-452

CATHERINE J. HEALY, ET AL.,
Petitioners,

vs.

F. DON JAMES, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF OF AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC., IN SUPPORT OF RESPONDENT.

This brief is filed pursuant to Rule 42 of the Supreme Court Rules. Permission to file has been granted by the Office of the Attorney General of the State of Connecticut, counsel for Respondents and by the American Civil Liberties Union, counsel for Petitioners. Letters to this effect have been filed with the Clerk of this Court.

Interest of the Amicus Curiae.

Americans for Effective Law Enforcement, Inc. (AELE), is a national, not-for-profit, non-partisan, non-political citizens organization, incorporated under the laws of the State of Illinois. AELE has been granted a tax-exempt status

as an educational corporation under Section 501(c)(3) of the Internal Revenue Code.

The basic purpose of AELE is to give to the law-abiding citizen a voice in issues of significance with regard to the criminal justice system. The major thrust of AELE's activity in furtherance of this aim has been through the filing of briefs, *amicus curiae*, in court cases of national import, the results of which will have a significant impact upon the enforcement of the criminal law or upon the overall effect of the rule of law in our society.

We believe that the instant case is just such a case. At issue is the right of a college administrator to deny official recognition and sanction on his campus to an organization which, in his judgment, refuses to respect the rights of others and constitutes a threat of potential violence and disruption to the orderly process of the educational institution in his charge.

The fabric of an open university has been torn and violence on the campus has become a national problem, as was noted by the Court of Appeals in its decision in the instant case.[1] Consequently, the power of the chief executive of an educational institution to exercise his reasonable judgment to preserve an open campus and protect his school from actual or potential disruption and violence is obviously an issue of overriding significance.

The issues in this case transcend the individual litigants and affect the powers of college and university administrators, nationwide, to maintain order upon their campuses, which is the first prerequisite to full enjoyment of free expression in the university. AELE believes that the principles of academic freedom should be accorded to *all* members of the academic community and not be reserved for the exclusive enjoyment of a few alienated dissenters. Therein lies the interest of this *amicus curiae*.

1. *Healy* v. *James*, 445 F. 2d 1122, 1131 n. 39 (2nd Cir. 1971).

SUMMARY OF ARGUMENT.

AELE in this brief supports the position taken by Respondents. Our arguments bear on the reasonable nature of the decision of President James to bar the SDS from CCSC and are concerned with the practicalities of the application of the First Amendment to the campus.

The threat posed by the SDS to the orderly operation of CCSC should be looked at in the perspective of the recent history of violence by the SDS nationwide. Evidence of SDS violence, compiled by investigative committees of both Houses of the Congress of the United States is presented.

Other realities of the First Amendment on campus are delineated including the futility of dealing with campus violence "after the fact" and the shortage of qualified college administrators and the terrible financial problems facing higher education in large measure because of campus violence.

Finally, we urge the Court to decide the instant case with the rights of *all* members of the campus community in mind, and to recognize the fact that if academic freedom is to be confirmed to the wishes of a disruptive few, the rights of the majority of students to learn in an atmosphere conducive to thought, guidance, and reflection must suffer as a consequence.

For these reasons this brief urges the Court to uphold President James' decision to bar the SDS as a valid and reasonable exercise of his authority.

ARGUMENT.

I.

THE SCOPE OF THIS BRIEF—THE APPLICATION OF THE FIRST AMENDMENT SHOULD REFLECT THE REALITIES.

AELE will reiterate neither the legal arguments made by Respondents brief as to why the decision of the Court of Appeals upholding President James' decision to bar the local chapter of the Students for a Democratic Society from Central Connecticut State College should be sustained, nor the policy arguments to the same effect made by *amicus curiae,* the American Association of Presidents of Independent Colleges and Universities (AAPICU). We do, however, agree with and support all of the arguments made by both briefs.

AELE will in this brief present to the Court data of a practical nature which we believe to be relevant to the resolution of the issues raised herein. This data is: 1) information pertaining to the nature and record of activism practiced by Students for a Democratic Society (SDS) as it constitutes a threat to open academic life and to the rule of law on the campus, and 2) information pertaining to some of the more practical adverse effects upon educational institutions and their administrators which have been caused by the campus disruptions of the SDS and similar organizations.

We believe these to be relevant to the issues raised by the instant case because they illuminate the far-reaching effects which this Court's decision will have upon administrators in other colleges and universities nearly all of whom have been, or may be confronted with the situation

faced by President James of Central Connecticut State College.

We believe that, in the final analysis, the central issue in this case is whether President James' decision to deny official recognition to the SDS at CCSC was reasonably calculated to protect academic freedom and other academic interests. Our arguments are directed towards considerations which establish the very reasonable nature of a decision, whether made by Dr. James or by any other educational administrator confronted with a similar situation, to deny such official recognition to a potentially violent and disruptive organization which demonstrably refuses to conform to the rules of an open campus.

The case at bar involves the application of the First Amendment to a troubled campus setting. Petitioners represent the interests of partisan activists, who espouse disruptive tactics, and contend for the First Amendment's protection. But the arguments must consider more than their interests because the rights of others in the campus community are affected in a very real sense by the disruption which has visited the schools. The schools are thus in the middle of a difficult conflict, and it is the intent of this brief to present the realities of the situation. We believe that First Amendment freedoms will have real meaning only if they are applied in a manner reflecting the realities of the situation.

Two courts in the instant case have already demonstrated full cognizance of the realities and the competing values at stake. Both the U. S. Court of Appeals[2] and the U. S. District Court[3] upheld President James' decision

2. *Healy* v. *James*, 445 F. 2d 1122 (2nd Cir. 1971).

3. *Healy* v. *James*, 319 F. Supp. 113 (D. Conn. 1970). The District Court had first required that Dr. James conduct an administrative hearing on the request of certain students to form a local SDS chapter at CCSC, 211 F. Supp. 1275. After the hearing Dr. James' decision to bar the SDS chapter from CCSC was upheld.

that, based on the record before him, the SDS would frustrate the college's established educational policies by fostering disruption and violence at CCSC.

Affirming the District Court, the Court of Appeals cited language from *Tinker* v. *Des Moines School District*, 393 U. S. 503 (1969); and found that, in reaching his decision to bar the SDS, Dr. James properly acted within "the comprehension of the state and of school officials, consistent with fundamental constitutional safeguards, to proscribe and control conduct in the schools." 393 U. S. at 507.[4] Additionally, the Court upheld the reasonableness of the inquiries about the SDS nationally which were made by President James and which led to his decision to deny recognition.[5]

It is apparent that the Court of Appeals applied a "reasonableness" test to the inquiries made by President James and to his judgment based on his findings pursuant to such inquiries. This, we submit, was the proper test for the Court to apply;[6] and it is the test which should be upheld by this Court, with regard to the instant case and for the benefit of other academic administrators who are faced with similar situations. We believe that the Court of Appeals properly rejected the absolutist view of the rights

4. 445 F. 2d at 1132 also citing *Eisner* v. *Stamford Board of Education*, 440 F. 2d 803 (2nd Cir. 1970) and *Esteban* v. *Central Missouri State College*, 415 F. 2d 1077 (8th Cir. 1969).

5. 445 F. 2d at 1132 n. 39: "The *reasonableness* of the inquiries made by President James in a nationwide campus atmosphere of ticking timebombs can hardly be open to serious question."

6. *See, Sellers* v. *Regents of University of California*, 432 F. 2d 493, 499 (9th Cir. 1970), where the Court upheld the defendant's refusal to permit the use of university facilities. The Court said: "Additionally, we must recognize that First Amendment rights are not absolute. Regulation as to time, place, and manner of the exercise of such rights is proper when reasonably related to a valid public interest. *Callison* v. *United States*, 413 F. 2d 133 (9th Cir. 1969)."

claimed by Petitioners under the First Amendment's guarantee of freedom of assembly;[7] and that it properly sought to determine, and did determine, that President James' decision was in the circumstances reasonable, as was claimed by Respondent's brief in the Court of Appeals.[8]

This brief, then, will present a realistic picture of the troubled situation faced by school administrators and of the competing interests which they are compelled to consider. Both are factors in determining the reasonableness of a school administrator's decision as to whether or not official recognition should be granted to an organization which is potentially disruptive and which openly refuses to accept the established rules of conduct on a campus.

II.

THE HISTORY OF VIOLENCE AND DISRUPTION OF THE SDS SHOULD NOT BE IGNORED.

The reasonableness of any response to a given threat can only be judged by considering the nature of the threat itself. This case involves an organization, the SDS, which has been a primary vehicle for disruption and violence on campuses across the nation. Thus, the standard of reasonableness for judging a refusal to grant official recognition to such an activist organization can be weighed only in the context of the threat of disruption and violence which the SDS actually presents and the harm which the SDS has actually caused to university life.

During the time span in which Dr. James made and subsequently affirmed his decision to bar the SDS from CCSC (October 1969 to June 1970) violence and disruption on college campuses had reached near epidemic proportions. The situation was described by a report, issued in October

7. Petitioners Brief in the Court of Appeals p. 11.
8. Respondents Brief in the Court of Appeals p. 5.

of 1970, by the Committee on Internal Security of the United States House of Representatives:[9]

> The school year 1969-1970 saw a sharp increase in protest demonstrations on college campuses.
>
> * * * * * *
>
> A total of 1,785 demonstrations were recorded by the close of the school year, F. B. I. Director Hoover announced. Sit-ins and building seizures numbered 313; ROTC installations were attacked in 281 instances; 73 protests involved military recruiting on compus; and 101 actions opposed Government research or corporate recruiting. In addition campuses were plagued by 246 instances of arson or attempted arson and 14 bombings. As a result of disruptions, 8 individuals died, 462 were injured and damages exceeded $9,500,000.00, the F. B. I. Chief reported (p. 150).

This was the background against which President James was called upon to decide whether or not to grant recognition to a local chapter of an organization which had been at the forefront of campus disruptions nationwide.

The fact that the SDS was often the prime mover in situations of campus violence and disruption cannot be the subject of serious question. The full extent of SDS leadership in college disruptions will probably never be known, but both the United States Senate and the United States House of Representatives conducted extensive investigations into the involvement of the SDS with campus violence and the results clearly indicate that a significant amount of such violence was, in fact, instigated, encouraged, and participated in by numerically small but highly active SDS members. For example, the House Committee on Internal Security (HCIS) concluded in this regard:

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9. Anatomy of a Revolutionary Movement: "Students for a Democratic Society." Union Calendar No. 750, 91st Cong. 2nd Session, House Report No. 91-1565. Hereinafter referred to as HCIS Report.

The potential of the SDS for creating campus disorders has been demonstrated to be far out of proportion to its size. A relatively small number of SDS activists was able, in a very short time and against the will of a great majority of the student body, to disrupt some aspect of the educational process on many of the nation's campuses.

While accurate statistics are not available, it is believed that less than 2 percent of all college students have engaged actively in any disorders causing physical injury or property damage. However, some of the actions of SDS militants have struck a sufficiently responsive chord to enlist the sympathy of many less militant students and to neutralize the campus "silent majority." For example, in one of the cases investigated by HCIS in one spring of 1969, the 15 to 20 estimated hard core SDS activists, even when supplemented by some 150 to 200 sympathizers, appeared insignificant when compared with a total student enrollment of 21,000. This SDS minority nevertheless succeeded in provoking four disturbances on the campus and forced the Kent State University Administrators to divert many man-hours and funds to the task of combating SDS efforts to disrupt the functioning of the University. (It was with profound shock that the Nation received the news May 4, 1970 of the fatal shooting of four Kent students during another campus demonstration.)

A small band of SDS members in a large student population was also successful in creating a campus disorder at Georgetown University where there were approximately 20 SDS members in a student body of over 3,000. In addition, the SDS chapter at George Washington University, which had a hard core membership of about 20, mustered 150 out of a total of 13,500 to a radicalizing movie film presentation which immediately preceded one seizure of the university building housing the Sino-Soviet Institution.[10]

10. HCIS Report, pp. 152, 153.

The incidents just described by the HCIS Report, indicating the extent of disruptions caused by a relative handful of SDS members and their supporters, are but one part of a much larger pattern of SDS instigated violence upon the campus. The HCIS Report for example lists other SDS linked disruptions in 1969:[11]

SDS members and activists:

Jan. 1969 — collaborated with other campus activists at the University of Chicago in a sit-in over the firing of a "Marxist" professor. (91)

helped break up a trustees' meeting at Stanford University in a protest against counter insurgency and war related research. (91)

reportedly engaged in vandalism in a Columbia University placement office when frustrated demonstrators could not locate Army and Air Force recruiters on campus. (91)

Feb. 1969 — were reported involved in small-scale disorders over dismissal of a professor at Michigan State University. (91)

were involved in "mobile" picketing which drove away a CIA recruiter from the University of Houston. (91)

were involved in driving off a Standard Oil Company recruiter from San Jose State College with an aftermath of smashed windows and kicked-in doors. (91)

11. Numbers in parenthesis after each of the following described incidents indicate the page of the HCIS Report at which the incident is described.

March 1969	engaged in a physical attack on other students to disrupt and force cancellation of a speaking engagement at Georgetown University by San Francisco's Mayor. (92)
	participated in a screaming, chair-throwing protest which cut short a speech by Dr. S. I. Hayakawa at the University of Colorado. (92)
	co-sponsored a "talk-in" which disrupted the efforts of representatives from the Chase Manhattan Bank to recruit at Cornell. (92)
April 1969	were involved in the forcible ejection of officials from a Harvard Administration building. (90)
	were involved in the occupation of a building at American University. (90)
	were involved in the occupation of a building at George Washington University. (90)
	were involved in the occupation of the building at Columbia University. (90)
May 1969	were involved in the occupation of a building at Stanford University. (90)
	were involved in the take over of a building at Northwestern University. (90)

This sampling of SDS activity during the first few months of 1969 delineates incidents which have one feature in common: an attempt by the SDS through the use of violent tactics to subordinate the will of the majority of students to that of a disgruntled minority of dissenters. The HCIS Report succinctly summed up the effect of SDS violence and disruption:

A particularly troubling aspect of SDS tactics was the

> willingness to use the most violent and obnoxious means to reach SDS goals such as the seizure of university buildings, disrupting of classes, holding administrators hostage, and the silencing of those who disagreed with SDS objectives. Such tactics are anathema to the principles of academic freedom which undergird the entire educational system. They can in no way be justified as a means of obtaining rights allegedly denied or in protest of inequities unremedied. The violent disruption of the University is, of itself, an infringement of the right of professors to teach and students to learn free from harassment and interference.[12]

The foregoing findings of the HCIS, we submit, present a picture of the SDS which would justify as reasonable the denial of official campus sanction to such a group by President James or by any other college administrator. These findings of the Committee of the House of Representatives charged with the investigation of threats to our national security from within[13] were buttressed by a report filed by the Permanent Subcommittee on Investigations of the Committee on Government Operations of the United States Senate.[14] The Subcommittee stated in its findings:

> Disorder, riotous conduct and senseless violence are alien to the traditionally peaceful campuses of American universities and colleges. There is no rationale by which they can be excused or condoned. They disrupt or destroy serious scholarship and cripple edu-

12. HCIS Report, p. 154.

13. Rules of the House of Representatives, 91st Cong., Rule XI POWERS AND DUTIES OF COMMITTEES ; 11. Committee on Internal Security found in HCIS Report at p. VI.

14. Riots, Criminal, and Civil Disorders, College Campus Disorders, Second Interim Report of the Committee on Government Operations, United States Senate, made by its Permanent Subcommittee on Investigations, March 23, 1971. 92nd Cong., 1st Sess. Senate Report No. 92-42. Hereinafter Investigations Subcommittee Report.

> cational processes. If carried repeatedly to the extremes which the Nation has seen during the past several years, they will destroy many of our major educational institutions.[15]

Commenting specifically on the SDS (and, incidentally, about the impact of local "offshoots" of national militant groups"—one of the issues in the instant case), the Senate Investigations Subcommittee found that:

> Testimony established that Students for a Democratic Society and the Black Panther Party, as well as affiliates of those organizations and others of similar philosophy, are guiding forces in a large percentage of the campus disruptions in recent years. However, the titles of organizations are not conclusive in themselves; frequently, local issues and protest movements dictate the names of organizations on particular campuses, although it has been shown clearly that the aims and tactics of local groups often are patterned upon and are basically identical with those of nationally known militant and revolutionary organizations.[16]

The findings of two of the investigative committees of the highest legislative chambers in the nation are unequivocal with regard to the actual and potential disruptive nature of the SDS upon campuses in the period 1969 and 1970.[17]

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15. *Id.* at 37.

16. *Id.* at 38.

17. See also, for examples of exhaustive analyses of the SDS disruptions on College campuses: Michener: *Kent State, What Happened and Why*, Random House and the Reader's Digest Association 1971 (a chronicle of the role of the SDS in shaping the Kent State Tragedy of May 4, 1970) and Methvin: *The Riot Makers*, 1970, Arlington House New Rochelle, N. Y., Ch. XIV, Columbia: A Case Study of Campus Demolition, p. 408 ff.; and *Communism and the New Left*, 1970 U. S. News and World Report, Inc. Washington, D. C. Ch.1 The American Left: Old and New p. 13 and Ch. VI, Target Youth p. 111.

The HCIS Report ends with the conclusion that by 1971 the SDS, nationally, through its mindless advocacy and use of violence and through its fragmentation into splinter groups, had become an organization which could no longer be considered a viable force on the campus. This is undoubtedly true in many respects, however the HCIS Report warns that:

> Just because the organization of SDS is now virtually a thing of the past does not mean that problems raised by the rapid proliferation of campus unrest of the decade of the 1960's are apt to fade. They may become more critical as newer organizations take shape and emerge as the new voice of radicalism among American students.[18]

Based on the foregoing information, we submit that:

1. In the instant case, President James' judgment that the SDS, based on its recent history, would be a disruptive influence at CCSC was reasonable, and;

2. The judgment of any other college administrator to deny official recognition to the SDS, or to an organization with a similar record, would be equally reasonable.

III.

THE APPLICATION OF THE FIRST AMENDMENT TO COLLEGES AND UNIVERSITIES SHOULD BE MADE WITH DUE REGARD FOR THE PRACTICAL PROBLEMS INVOLVED IN CAMPUS DISRUPTIONS.

A. The Absolutist Construction of the First Amendment Suggested by Petitioners Disregards the Realities of the Results of Campus Violence.

Petitioners, in their brief, have taken an absolutist approach towards the First Amendment rights of those students who wished to form an SDS Chapter at CCSC. They

18. HCIS Report p. 158.

state flatly that "Respondents Must Use Less Drastic Means [than barring the SDS chapter from CCSC] to Secure Its Valid Interest in Being Free of Illegal Disorders". (Br. p. 31.) Petitioners would have this Court relegate President James to three kinds of responses to illegal activity by students or groups of students: (1) punishment of individual students after unlawful acts have been committed by them, (2) withdrawal of an organization's recognition, and, (3) injunctions against illegal conduct.[19] All three contain the common element that the disruption must actually have happened (or be clearly and presently threatened) before any action can be taken. Thus, it is suggested by the Petitioners that the First Amendment somehow requires a college administrator to grant official recognition upon his campus to a demonstrably violence-prone group of students and then to wait to see if and when they choose to burn a ROTC building, occupy a hall, disrupt a meeting or kidnap one or more of the college officers, *then and only then*, if Petitioners' theory is to be accepted, can the administrator act to deal with disruptions which might have been prevented by his refusal to recognize such violence-prone group in the first place.

The Sixth Circuit Court of Appeals in *Norton* v. *Discipline Committee of East Tennessee State University*, 419 F. 2d 195 (5th Cir. 1969) recognized the fallacy of such an absolutist view of the *Tinker* rule and of the First Amendment. In upholding a school disciplinary action against students who distributed false and inflammatory lit-

19. Br. p. 31 and 32. Petitioner's brief admits with admirable candor that the latter two remedies raise "conceptual", "factual" and "sometimes procedural" difficulties. This is a masterpiece of understatement. Withdrawal of recognition from the SDS after a campus has exploded into violence is hardly an effective answer to the threat of disruption and in case after case, when the injunctive process has been used, and the resultant confrontation with civil authorities enforcing the injunction have escalated the violence far beyond its former limits.

erature, the Court differentiated *Tinker* on the basis of the reasonable nature of the action of the School in the *Norton* case. The Court stated at page 199:

> It is not required that the college authorities delay action against the inciters until after the riot has started and buildings have been taken over and damaged. *The college authorities had the right to nip such action in the bud and prevent it in its inception* (Emphasis added).

We are in complete agreement with the holding in *Norton*, the legal arguments of counsel for Respondent, and the policy arguments of *amicus curiae*, AAPICU. The sense of their point is that the First Amendment must have a realistic construction which is not absolutist but which has regard for the interests of all members of the campus community. We will not elaborate on these arguments here. We seek in this section, rather, to present to this Court data of a rather practical nature concerning the *effect* of campus violence upon the colleges or universities involved in order again to focus upon the reasonableness of decisions such as that of Dr. James'.

The overall tragic effects of campus violence needs no extended discussion. The names "Kent State", "Columbia", and "San Francisco State", for example, have taken on a meaning in contemporary parlance totally different from their designation as institutions of learning. Each, in its own way, serves as a symbol of massive, destructive campus violence which, at least temporarily, brought an entire academic entity to its knees. There are, however, less dramatic but nevertheless extremely important effects of campus violence, aspects of the problem which do not receive extensive media coverage but which demonstrate enormous dangers to the continuance of our system of higher education. We will consider two of these practical problems caused by student disorders: the current short-

age of qualified individuals willing to become college administrators, and the tremendous monetary costs of campus violence.

B. College Presidents Are Quitting in Despair.

In August of 1970 *U. S. News and World Report* presented a truly startling article entitled "Why College Presidents are Quitting."[20] The article begins with the following terse paragraphs summing up the situation:

> "The wear and tear of academic life in 1970 is driving college presidents out of their jobs in numbers that educators view as "alarming."
>
> All over the country, heads of colleges and universities are deciding they have had enough of student revolt and its attendant troubles.
>
> The administrators are quitting by the dozens and heading for more peaceful occupations.
>
> Good replacements are getting harder to find and harder to keep in the face of mounting campus pressures. There is also a shortage of competent administrative deans.
>
> According to figures compiled by the American Council on Education, the *annual turnover in college presidencies has jumped nearly 80 per cent in the last year* at 30 and 31 (Emphasis added).

As evidence of this fact, *U. S. News* reported that, as of the time that the article was written, universities which were looking for new presidents included Harvard, Stanford, Wisconsin, Arizona State, Texas at Austin, Texas A & M and the State University of New York.[21] Additionally, the article reported, the presidents or chancellors of Rutgers, the State University of New Jersey, the Uni-

20. U. S. News and World Report, August 30, 1970, at 30.

21. *Id.* at 30.

versity of Texas System and the Universities of Arizona, New Hampshire, Illinois, North Dakota and Purdue would be leaving within the year.[22]

Indicative of the manner in which violence, or the threat of violence is affecting the turnover in college presidents is the following excerpt from this article:

> *Occupational hazards.* Residences of College presidents have been picketed, stoned and threatened with bombing. Frequently their offices have been broken into and ransacked.
>
> President Edward H. Levi of the University of Chicago and Dr. Karl L. Falk, former acting president of Fresno State College in California, are among administrators who have found it advisable to employ bodyguards.
>
> Hilton C. Buley, retiring president of Southern Connecticut State College in New Haven, keeps fire extinguishers on every floor of his home—"just in case".
>
> President James E. Perdue of the State University of New York at Oswego has complained of telephone calls "of the most vicious type" that have been made to his home at all hours of the day and night.
>
> Samuel E. Braden, who resigned as President of Illinois State University at Normal, has told friends that he and his family can no longer stand "the ever-present threat of violence".
>
> A week after he was burned in effigy at a student demonstration, Dr. James F. Tucker quit as president of Virginia State College in Petersburg "for reasons pertaining to the best interest of my immediate family".
>
> When Dr. Kenneth S. Pitzer announced his resignation at Stanford on June 25, he explained: "Entirely too much of my effort has been devoted to matters of a purely administrative or even of a police

22. *Id.* at 32.

nature". A return to a more scholarly life, he added, "will be most welcome".

Dr. Pitzer had to call police to his campus 13 times in May. During student demonstrations, windows in his office were smashed, his house was painted with slogans and he himself doused with paint.

The University of Wisconsin was in the fourth day of a student demonstration against the war when President Fred Harrington decided to give up his $47,500-a-year post. His resignation was announced on May 8 to become effective October 1 (page 30).

The president of a college, whether it be state or privately owned, is the chief executive of that college. He is, in the final analysis, responsible for everything that transpires upon the campus in his charge. The excerpts from the article just cited indicate clearly the toll which is being taken by the ravages of violence upon these chief executives.

The job of a college president in these troubled times is difficult enough; it should not be made more difficult by strained and absolutist interpretations of the First Amendment which require a college president to recognize patently violence-prone groups despite the fact that, in his best judgment, they constitute a direct threat to academic order and the rule of law on his campus.

C. Our Colleges and Universities Cannot Bear the Monetary Cost of Campus Violence.

It is common knowledge that our institutions of higher learning are in financial difficulties such as they have never experienced before. One major contributing factor to the red ink status of most colleges and universities is the tremendous financial toll exacted by campus disruptions.

Actual costs are staggering. For example in the school year 1969-70, according to the HCIS report, damages

exceeded $9,500,000.[23] And compounding these already astronomical amounts is the fact that insurance costs have risen at incredible rates, if insurance is available at all. Thus, in an October 16, 1970 article in the Wall Street Journal the point was made that:

> The recent rise in student unrest and vandalism has pushed many college property insurers to raise insurance rates drastically, boost deductible amounts or drop out altogether from the college insurance market. At the University of California's nine campuses, for example, insurance costs skyrocketed 800% in two years, and at Southern Illinois University at Carbondale, insurance premiums this year were $342,000. A year ago they were only $32,000.[24]

An article in the February, 1972, issue of *Readers Digest:* "Hard Times Hit the Campus", by Carl T. Rowan and David M. Mazie, describes the current financial crises which face our institutions of higher learning. The article delineates in some detail what Clark Kerr, former president of the University of California and currently chairman of the Carnegie Commission of Higher Education calls "the worst financial crises in the history of education." At 201.

Mr. Rowan and Mr. Mazie point to a study of the financial crises facing higher education conducted by Earl F. Cheit, professor of business administration at the University of California at Berkeley, which estimated that "nearly two-thirds of the nation's 2,500 plus colleges and universities, private and public, large and small, are in financial difficulty or headed for trouble" at 202. One of the article's major conclusions is the flat statement that:

> If this financial crunch continues unchecked, it could slam college doors on millions of low and middle income youngsters. At 202.

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23. HCIS Report p. 150.

24. *Wall Street Journal*, "Insuring the Campus Grows More Costly; 'Confrontation Looms'" Oct. 16, 1970 at 4.

The authors list several reasons for this monetary crisis including the general economic picture in this country today, rising costs, poor financial management, and inefficient use of facilities. However, significantly, for the purpose of this brief, student violence is mentioned as a major contributing factor to the "crunch". Thus:

> Campuses have lost their favorite child appeal *in the wake of student protests*, a national belt-tightening, and a growing public disenchantment with the operation and management of higher education. At 202. (Emphasis added.)
>
> * * * * *
>
> Balance sheets generally started to show signs of trouble in the late 1960's. Cost increases were spurned by inflation, rising salaries, increased enrolments *and campus disturbances* . . . At 202. (Emphasis added.)
>
> * * * * *
>
> At the same time that costs were leaping, income began levelling off. Federal research grants . . . dropped to growths of 2 per cent . . . . giving by alumni and others suffered from general economic conditions, changes in tax laws *and indignation over campus disruptions.* At 203. (Emphasis added.)

We submit that the public is disenchanted with our university situations; because the public senses, quite accurately, that by becoming hotbeds for violent protest the universities are straying from their educational purposes.

Again, we ask this Court to consider practicalities. Should a college president, trying desperately to furnish a quality education within a greatly limited, or even a deficit budget, be forced to welcome upon his campus a group which he reasonably believes may engage in disruption to such an extent that he may incur perhaps hundreds of thousands of dollars worth of property damage, see his insurance costs double and redouble, and as a result of student disruptions, see his alumni donations decrease markedly?

We know of nothing in the First Amendment which should be construed to force such a situation upon a college president. We recognize that such monetary considerations are not, of course, controlling when *real* constitutional rights are involved; but we believe that the "rule of reason test" applied by the Court of Appeals in the instant case represents a proper balancing of the rights involved and, further, that such a test should encompass a consideration of the potential dollars and cents cost to a given institution which vandalism and physical damage by activist inspired riots could do. We also wonder how many desperately needed scholarships for deprived young men and women from thet ghetto could have been awarded if millions of dollars had not been utilized to pay for increased insurance premiums, physical damage and other monetary losses occasioned by organizations such as the SDS.

IV.

THE COURT SHOULD AFFIRM AN APPLICATION OF THE FIRST AMENDMENT TO THE UNIVERSITY WHICH PERMITS ENJOYMENT OF FREE EXPRESSION BY MORE THAN A FEW INTOLERANT ACTIVISTS.

A. What Exists Here Is an Opportunity to Define a Balanced View of the First Amendment.

Petitioners brief, at page 15, states quite accurately that: "This case gives the Court the opportunity to implant the First Amendment firmly on the college campus." We do not urge this Court to restrict the application of the First Amendment on the campus. To the contrary, AELE urges that this opportunity be taken to implant a *balanced* application of the First Amendment on the campus which protects free expression for *all*, rather than for a few.

We believe that others beside violent activists have a vital interest in freedom of expression in the university. Moreover, we believe that those who choose to express themselves outside of the orderly framework of university life, make it impossible for the majority of the campus community to exercise their own rights of free expression.

Therefore, we urge this Court to uphold President James' decision based upon the First Amendment considerations, for President James' decision was made in order to preserve the integrity of free expression on his campus.

B. An Absolutist View of the First Amendment Can, in Reality, Stifle Freedom of Speech and Assembly Upon the Campus.

The university, because of the special nature of a campus community, has experienced a concentrated development of the political dynamics which developed in the nation as a whole during the 1960's. The SDS was a primary vehicle for that development, and its history parallels the history of leftist political activism of the period. SDS and political activism changed qualitatively in those years from democratic action to totalitarian force, but in some instances the lower courts have yet to understand fully the nature of that change. As a result, meaningful freedoms on the campus have actually been subordinated to the attacks of the new totalitarians.

Whatever its original aims and methods in the last half of the decade, the SDS rejected traditional political action in favor of programs which contemplated action outside the democratic processes, and, as has been described elsewhere in this brief, its members resorted to violence and intimidation.

The new mode of political activism resulted in severe disruption of the schools. Yet, far too often, the Courts continued to apply Constitutional standards as if the student activists had remained within the tradition of democratic action. Lower court cases established rules greatly limiting possible responses by school authorities. The rules compelled the schools in some cases to permit almost any type of activism, up to and including actual violence and severe disruption. Even where disciplinary action was permitted, the courts compelled school administrators to adopt due process proceduralisms akin to the rules of the criminal justice system.[25]

At the same time, this Court established "academic freedom" as a special concern of the First Amendment in *Sweezy* v. *New Hampshire*, 354 U. S. 234 (1951), *Keyishian* v. *Board of Regents*, 385 U. S. 589 (1967), and *Tinker* v. *Des Moines School District*, 393 U. S. 503 (1969).

We believe that true academic freedom has suffered as court-imposed limitations on the order-keeping and disciplinary powers of school authorities have increased, for the real intolerance towards open discussion has been promulgated by the new activists, not by the authorities. Yet, in many cases, the authorities have not been permitted adequate means with which to respond.

Lower court cases, in some instances, failed to recognize that First Amendment problems had changed with the qualitative change in political activism. Often the lower courts failed to see that the power of school authorities to protect free expression was equally essential.

The First Amendment would be no more than an abstraction if in the name of free expression academic freedom cannot be preserved for the whole of the academic com-

25. Petitioners' brief cites numerous examples of the cases which developed these standards of response to school problems.

munity. We submit that it should now be recognized that an orderly framework protected by school authority is needed if freedom of expression is to have any real meaning in our schools.

This Court, in the instant case, has an opportunity to reaffirm the vitality of the First Amendment by holding that the First Amendment freedoms established in *Sweezy, Keyishian,* and *Tinker* must be applied to all; that these freedoms can be enjoyed only in the framework of an orderly campus situation; and that school officials have the duty to protect this interest from those who refuse to work within that framework.

In this case, it had been demonstrated to the satisfaction of President James that the SDS should not be given recognition on his campus because the organization had no regard for the free speech rights of others. In his October 30, 1969 Memorandum, President James found that he could not officially sanction "an organization which openly repudiates those principles [freedom of speech, academic freedom and the freedom of establishing an open forum]". By making this decision President James acted to maintain his campus open to the free expression of ideas of all of the members of the university community.

In May of 1970, before President James made his final decision, hundreds of universities were closed down in a massive spasm of campus violence. While the schools were closed, student partisans appropriated campus facilities for their exclusive platform thereby totally disregarding the academic freedom of others, which the normal university routine should have assured.

Any construction of the First Amendment which would permit this would paradoxically destroy academic freedom. This paradox is demonstrated by the fact that recently several groups of non-dissenting students have filed legal

actions in an attempt to insure that *their* freedom of expression on an open campus be protected. Two suits are representative: *Belk* v. *Chancellor of Washington University,* case No. 70C 151 (1) in the Eastern District Court of Missouri,[26] and *Asher* v. *The Regents of the University of Wisconsin,* 318 F. Supp. 82 (E. D. Wis. 1971), now on appeal in the Seventh Circuit, Case Nos. 71-1075, 71-1116. The *Asher* case stemmed from the May 1970 disruptions which embroiled many campuses.

Obviously, the benefits of the First Amendment are not the exclusive property of any one group. If, as the students in *Belk* and *Asher* contend, the university violates the rights of the majority of students by permitting the disruption of campus life; the application of First Amendment rights gives rise to a conflict: what is the school official to do when the free expression of one group conflicts with the opposing free expression of a second group?

The answer to the foregoing question is that the First Amendment must be applied in the framework of the orderly procedures of university life which contemplate a free and open academic atmosphere available to *all.* This is what President James required of all of the student groups which had official recognition on his campus. The U. S. District Court for the Eastern District of Michigan saw the proper resolution of such a conflict in *McAlpine* v. *Reese,* 309 F. Supp. 136 (E. D. S. D. Mich. 1970). Plaintiffs in that case sought to enjoin the enforcement of a Detroit ordinance after a violent confrontation in a school. The Court refused, saying:

> But it is apparent that there is an attempted erosion, in the name of the First Amendment, of other freedoms equally dear. This is the case before us. The freedoms of a child to learn in an atmosphere con-

26. A motion to dismiss in *Belk* was decided in favor of the plaintiff students, in an unpublished decision.

ducive to thought, guidance, and reflection, the freedom of an instructor to teach without fear of disruption of his class or diversion of its attention—these freedoms are subservient to none. The cloak of the First Amendment is not so broad as to cover their destruction, even their disruption. What certain First Amendment protagonists have overlooked in such violent assertions of their constitutional rights as we have before us, is that the asserters themselves have duties and obligations as well as constitutional rights. Under our scheme of things, right and duty travel a two-way street. The assertion of a constitutional right does not absolve the asserter from the performance of his own duties and obligations. Nor does it permit him to violate the reasonable and constitutional rights of others. 309 F. Supp. at 140.

C. It Is Not a Prior Restraint on the Rights of Individual or Groups to Require Them to Conform to the Orderly Framework of Free Speech.

In the brief of *amicus curiae*, the American Association of Presidents of Independent Colleges and Universities, it is pointed out that the university represents a unique situation with regard to the application of the First Amendment. Rules of conduct have developed to give life to the special, functional purpose of the university.

Without reiterating this argument, AELE submits that it is not an unconstitutional prior restraint to those rules which protect the functional purpose of the university. As did the school regulation[27] cited by President James in the instant case, university rules generally recognize the right of free expression; but additionally, they require respect for others' rights within the university community. This is a rule of free dialogue which is basic to the intellectual life which a university desirably fosters.

27. Petitioner's Exhibit B.

Free dialogue assuredly does not result from the activism of campus totalitarians, for they destroy academic freedom and intimidate the entire university in their attempts to force their point of view. In disregarding the rule of reason upon the campus, they endanger the functional purpose of the university and the rights of all those who depend on the free discourse which it sponsors. Obviously, school officials cannot permit this. It is inadequate to suggest that such violations can be handled after fact. The damage to the university has already been done, for academic freedom is a fragile thing.

The harm to the university life which disruption causes goes for beyond a few classes postponed or a few desks broken. Faculty and student morale is shattered, legitimate authority is more readily flouted in later "confrontations," and valuable time of faculty and students is expended in disciplinary hearings and meetings. (It is sometimes forgotten that a faculty is hired not to run hearing boards but to teach). Possibly the worst result is the factionalization of what was once a community, so that the university becomes a kind of spiritual corpse; the spirit and life are drained away replaced by poisonous surliness, impatience, and intolerance quite alien from an atmosphere of cooperation and mutual respect.

The only defense of the university is to restrict from campus those who refuse to accept its rules of orderly discourse and scholarship. This defense should not be held to be an invalid prior restraint on freedom of speech, so long as it is reasonably calculated to protect the proper functioning of the school.

This was recognized by the District Court for the Western District of Michigan in *Cholmakjian* v. *Board of Trustees of Michigan State University,* 315 F. Supp. 1335 (W. D. S. D. Mich. 1970). This case involved a civil suit

against Michigan State University arising from a disruption in May, 1970. Plaintiffs had been arrested in a protest occupation of a school building. The Court refused to grant a preliminary injunction against their prosecution, stating:

> The court can only add that the University has the right and the duty to insure that the unfettered pursuit of truth, knowledge and understanding is not deliberately interrupted by those who seek to advocate, to the detriment of the above values, their own partisan interests. It thus follows that the University may act when it reasonably forsees that action may be necessary to prevent such a result. 315 F. Supp. at 1347.

Thus, we submit that it should not be held to be an impermissible prior restraint to require one to respect the free speech and thought of another in the university context, and reasonable means to that end should be commended, not condemned, by this Court.

CONCLUSION.

In this brief we have asked this Court to reject the absolutist approach to the First Amendment, contended for by Petitioners, in favor of the "rule of reason" test applied by the courts below. If, as we contend, a rule of reason test is to be applied to Dr. James decision to bar the SDS from CCSC then practical arguments such as we have raised—the nature of the threat of the SDS, the scarcity of qualified college administrators which campus violence has caused, and the monetary costs of such violence—should be considered in determining the reasonableness of the decision.

We urge this court to uphold the decision of the Second Circuit Court of Appeals below and to rule in favor of Respondents.

Respectfully submitted,

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SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 452. 71-452

CATHERINE J. HEALY, ET AL
Petitioners,

v.

F. DON JAMES, ET AL
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENTS

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INDEX

	Page
Question Presented	1
Statement of Case	1
Argument	
I. Respondents acted within their comprehensive authority to prescribe and control conduct on the college campus.	7
II. The constitutional rights of the Petitioners have not been violated.	18
A. The rights of each Petitioner to speak and to associate have not been proscribed.	18
B. The Petitioners have been afforded due process.	20
III. This Court has never considered the precise issue in this case.	22
Conclusion	26

CASES CITED

	Page
Adderly v. *State of Florida*, 385 U.S. 39 (1966)	8
American Civil Liberties Union of Va. v. *Radford College*, 315 F. Supp. 893 (1970)	8
Brooks v. *School Dist.*, 267 F.2d 733 (8th Cir.) cert. denied, 361 U.S. 894 (1959)	17
Cole v. *Trustees of Columbia*, 300 F. Supp. 1026	10
Dickey v. *Alabama State Bd. of Ed.*, 273 F. Supp. 613	17
Epperson v. *Arkansas*, 393 U.S. 97 (1968)	18
Estaban v. *Central Missouri State College*, 415 F.2d 1077 (1969)	8
Hague v. *Comm. for Ind. Organization*, 307 U.S. 496 (1939)	18
Hammond v. *South Carolina State College*, 272 F. Supp. 947 (D.S.C. 1967)	7
Norton v. *Discipline Committee of East Tennessee University*, 419 F.2d 195 (6th Cir., 1969)	18
Saxton v. *Bd. of Regents*, No. 123-165, Cir. Ct., Dane County, Wisc., May 21, 1968	22
Schenk v. *United States*, 249 U.S. 47 (1919)	16
Shelton v. *Tucker*, 364 U.S. 479 (1960)	18
Speiser v. *Randall*, 357 U.S. 513 (1958)	25
Stacy v. *Williams*, 306 F. Supp. 963 (1969)	8

Tilton v. *Richardson*, 403 U.S. 672 (1971) 20

Tinker v. *Des Moines Ind. Comm. School Dist.*, 393 U.S. 503 (1969) 9

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Univ. of So. Miss. Chapter of the Miss. CLU v. *Univ. of So. Miss.*, _____ F.2d _____ (5th Cir., 1971) 23

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Conn. Gen. Stats., §§ 10-109, 10-109(b) 7

IN THE

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OCTOBER TERM, 1971

No. 452

CATHERINE J. HEALY, ET AL
Petitioners,

v.

F. DON JAMES, ET AL
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENTS

QUESTION PRESENTED

Whether the denial of official college recognition to the local chapter of Students for a Democratic Society by President James of Central Connecticut State College violated the constitutional rights of the petitioner-members of that organization?

STATEMENT OF CASE

While the respondents are in general agreement with the petitioners' statement of the case, we feel it should be clarified or corrected in several material respects.

The petitioners have neglected to mention that on May 9, 1969, the college administration, with faculty approval, had

adopted a "Statement on Rights, Freedoms and Responsibilities of Students". (Pet. for Cert., pp. 24a-32a).

The statement at page 3, Brief for Petitioners, that the "only" reason the petitioners chose to use the national name was because it brought to mind the type of organization they wished to bring across is misleading and inaccurate. The Student Affairs Committee at its October 2, 1969 meeting posed the following question, among others, to a representative of the local chapter of Students for a Democratic Society, (SDS) and received the noted reply:

> "Q. Why does the local chapter care to use the national name if it will not affiliate?
>
> A. Because the name brings to mind the type of organization we wish to bring across, that is a left-wing organization which will allow students interested in such to express themselves" (A. 94-95).

That reply did not satisfy the committee. It deferred action on the petitioners' request for recognition until the petitioners presented to the committee, among other requirements, "(d) a statement of what affiliation to the national organization is intended by the local chapter." (A. 95).

At the 13 October 1969 meeting of the Student Affairs Committee, considerable discussion again centered around the reason the petitioners chose to call themselves a local chapter of SDS and in explaining their reasons Mr. Theodore Tester, one of the petitioners, "indicated that there was no such thing as an SDS National; that individuals in the organization wanted to keep a loose arrangement and wanted to be able to pick up ideas from several of the factioned groups; [he stated] that the concept of SDS exists in the minds of those who run it. As to the question of what does a chapter mean, [the

response was] that a local chapter of SDS cannot be categorized in the usual manner of student organizations; that the local SDS represents only certain ideas of the National SDS as presently developed." (A. 98).

Thereafter the committee reviewed the statement of purpose of the organization and approved the application by a vote of 6 to 2 with the explicit qualification noted at page 4, Brief for Petitioners.

The quotation[1] from the October 30, 1969 memorandum of President James as the reason for denying recognition to the local chapter is inexcusably brief and misleading, since his reasons are material to the consideration of the question presented to this Court. Accordingly, the Respondents refer this Court to the complete text of President James' memorandum which is reproduced in the separate Appendix at pages 14-16.

The statement at page 4, Brief for Petitioners, that President James was personally involved in the incident at the Student Center is not correct. The office of Dean Judd received notice that a meeting of the local chapter of SDS was to be held on November 6, 1969 at 7:00 P.M. in the Devils' Den of the Student Center on campus to discuss President James' action. Dean Judd thereupon advised the group in writing that they could not meet in the Devils' Den or in any other college property since C.C.S.C.—SDS was not a duly recognized college organization. (A. 16-17).

The administrative hearing briefly referred to at page 4, Brief for Petitioners, was ordered by Judge Clarie to clarify the ambiguity in the petitioners' application (Pet. for Cert., p. 62a) and was to be held in accordance with certain sugges-

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[1]Brief for Petitioners, p. 4

tions which were categorized as a "blueprint" for the hearing by the Court of Appeals and enumerated as follows:

"(1) The hearing was to be held within 30 days.

(2) Reasonable notice was to be given to all parties.

(3) The hearing was to be conducted by either President James or a hearings officer duly designated by him and acting in his stead.

(4) All plaintiffs were to be afforded an opportunity to be heard.

(5) Cross-examination of witnesses was to be allowed.

(6) A record of the hearing was to be made.

(7) The hearing was to be conducted in a climate of respectful civility.

(8) Without attempting to restrict the scope of the hearing, the following lines of inquiry were suggested by Judge Clarie:

(a) The initial question might be whether or not a local unaffiliated chapter of SDS can lawfully exist without being subject to the dictates of the national organization.

(b) A copy of the organization's charter, by-laws or other similar type of document might be helpful on this point.

(c) In light of the recent fragmentation of the National SDS, it might also be relevant to know of which faction, if any, this group wishes to become a local chapter.

(d) Were it to be found to be impossible for a local chapter of SDS to exist without being affiliated with the national parent organization, could the aims and philosophy of the latter group become relevant and important?

(9) Minutes of the October 2 and October 13, 1969 meetings of the Student Affairs Committee were to be produced.

(10) Judge Clarie directed that President James, after the conclusion of the administrative hearing and upon the overall record, make his findings as to whether or not the application met the existing policy standards of the college, which would qualify the applicant club for official campus recognition.

(11) Jurisdiction was retained by the District Court for the entry of such further orders or judgments as might be necessary and appropriate." (Pet. for Cert., pp. 8a-10a).

The Court of Appeals found that Petitioners failed to comply with the suggestions of Judge Clarie in at least the following respects:

"(1) They failed to submit a copy of their charter or by-laws.

(2) They failed candidly to clarify the apparent conflict between the name of their proposed organization, 'Students for a Democratic Society of Central Connecticut State College,' and their disclaimer of being under the dictates of the national SDS organization.

(3) They failed candidly to respond to inquiries whether they would resort to violence and disruption on the CCSC campus, including interruption of classes.

(4) They failed to testify at the administrative hearing and to subject themselves to cross-examination, despite Judge Clarie's explicit direction.

(5) They failed to offer any evidence whatsoever at the administrative hearing designed to enable the college administration and Judge Clarie to resolve the issues for which the hearing was ordered; but, on the contrary, they sanctioned conduct at the hearing just the opposite of the 'climate of respectful civility' ordered by Judge Clarie." (Pet. for Cert., pp. 20a-21a).

The signed statement referred to at page 5, Brief for Petitioners, was submitted to the hearing officer by counsel for petitioners and also included a statement of change of name of petitioners' proposed organization from "local chapter of Students for a Democratic Society" to "Students for a Democratic Society of Central Connecticut State College." (Pet. for Cert., p. 12a).

The transcripts of Hearings before the Committee on Internal Security of the House of Representatives introduced into evidence by the hearing officer substantiated the fact that provisions in the SDS national constitution required adherence to national policies by local chapters and also substantiated the self-proclaimed violent and destructive aims of the SDS national leadership which had been translated into action on the campuses of other colleges. (A. 78-91, 93). The petitioners' conclusion as to the purpose of the submission of the transcripts into evidence is not proper in a statement of the case.[2] However, it is proper to note that counsel for petitioners objected to their introduction as irrelevant. (A. 66).

President James' letter of July 10, 1970 reaffirming his earlier denial of recognition to the local chapter of SDS is

[2] Id., p. 5

fully reproduced (A. 103-105) and speaks for itself. The inferences and conclusions of the petitioners relative to his reasons for denying recognition to the local chapter are not proper.[3]

As to extended argument seeking to rebut the finding of the Court of Appeals that petitioners engaged in "disruptive tactics" in footnote 5,[4] we will address ourselves to it in the section of our brief devoted to Argument.

ARGUMENT

I. RESPONDENTS ACTED WITHIN THEIR COMPREHENSIVE AUTHORITY TO PRESCRIBE AND CONTROL CONDUCT ON THE COLLEGE CAMPUS.

The respondent James as the President of Central Connecticut State College is impressed with the responsibility of administering the college under the supervision and control of the Board of Trustees for State Colleges (Conn. Gen. Stats., §§ 10-109, 10-109(b)). In the administration of the college, he is carrying out the governmental interest of the State in providing educational facilities for its young people.

"The majority of the taxpayers who established through representative government, the institution, and all the taxpayers who support this institution, have a vested interest in a peaceful campus, an academic climate of order and culture. The power of the president to oversee, to rule, is an integral part of the mechanism for providing and promoting education at State College . . ." *Hammond* v. *South Carolina State College*, 272 F. Supp. 947, 949 (D.S.C. 1967).

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[3]Id., p. 5
[4]Id., p. 6

That the courts have considered the interplay of the respective responsibilities of school officials and students in the special characteristics of the school environment is evident from the rulings in representative cases.

Courts have ruled for example:

> "We . . . hold that a college has the inherent power to promulgate rules and regulations; that it has the inherent power properly to discipline; that it has the power appropriately to protect itself and its property; that it may expect that its students adhere to generally accepted standards of conduct."
>
> *Estaban* v. *Central Missouri State College,* 415 F.2d 1077, 1089 (8th Cir. 1969).
>
> "College officials properly have wide discretion in operating the school and in determining what actions are most compatible with its educational objectives." (citing cases).
>
> *American Civil Liberties Union of Va.* v. *Radford College,* 315 F. Supp. 893, 896 (1970).

The Court in *Stacy* v. *Williams,* 306 F. Supp. 963 at 969, upheld "the premise that the facilities of state colleges and universities, dedicated as they are to the specialized function of education, may be utilized solely for that purpose" citing this Court's holding in *Adderly* v. *State of Florida,* 385 U.S. 39 (1966) as follows:

> "The state, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated."
>
> "[This] Court has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school authorities, consistent with fundamental con-

stitutional safeguards, to prescribe and control conduct in the schools."

Tinker v. *Des Moines Ind. Comm. School Dist.*, 393 U.S. 503, 507 (1969).

On the other side of the coin, the court in *Estaban*, supra, at p. 1089, delineated the responsibilities of the college students in part as follows:

"College attendance, whether it be a right or a privilege, very definitely entails responsibility. . . . The mass denial of rights of others is irresponsible and childish. So is the defiance of proper college administration. . . ."

To the same effect, the Court in *Stacy*, supra, held at page 969 that "college students can have no valid objection to proper rules governing their conduct as members of the academic community" citing and endorsing the statement made by the United States District Judges for the Western District of Missouri, sitting en banc, on the subject of *"Obligations of a Student" in General Order on Judicial Standards of Procedure and Substance in Review of Student Discipline in Tax Supported Institutions of Higher Education"*, 45 F.R.D. 133 at 141, in part, as follows:

"The voluntary attendance of a student in such institutions (tax supported educational institutions of higher learning) is a voluntary entrance into the academic community. By such voluntary entrance, the student voluntarily assumes obligations of performance and behavior reasonably imposed by the institution of choice relevant to its lawful missions, processes and functions. *These obligations are generally much higher than those imposed on all citizens by the civil and criminal law.* (emphasis supplied).

Applying the above expressions of judicial insight to the record in this case, it is conclusively evident that President James properly denied recognition to the local chapter of Students for a Democratic Society.

It is certainly within the actual knowledge of each member of this Court that during the academic years 1968-69 and 1969-70 there were numerous violent demonstrations on college campuses. The Circuit Court referred to an *Address* by Honorable Jerris Leonard, Assistant Attorney General of the United States, at Conference of Association of Governing Boards, St. Louis, Missouri, on October 6, 1970 citing the startling statistics for such periods. (Pet. for Cert., p. 22a, note 39).

The involvement of the national SDS and its local chapters in the campus disruptions is extensively chronicled in the amicus brief of Americans for Effective Law Enforcement, Inc., filed in this case.

The violent participation of SDS chapters in college disturbances led Judge Tenney of the District Court for the Southern District of New York to comment in Cole v. Trustees of Columbia, 300 F. Supp. 1026 at 1028:

> "In furtherance of the Society's objectives, its *chapters and members* have often been the focal point of the expression of opposition to certain foreign and domestic policies of the United States Government. In this respect and in accordance with *its aims and purposes*, the organization has both directly and indirectly participated in campus disorders which have resulted from the spread of student unrest." (Emphasis added).

It was in this violent and disruptive climate that the petitioners met in September, 1969 and decided to form a

local chapter of Students for a Democratic Society on the campus of Central Connecticut State College and seek official recognition from the college administration.

If, as the petitioners claim, they wished to form "a left-wing organization which will allow students interested in such to express themselves" (A. 95) they could have chosen any one of several names which would have identified them with that philosophy, i.e., The Progressives, The Left-Wing, etc. However, they opted to choose the national SDS name "because the name brings to mind the type of organization we wish to bring across." (A. 94). And they were determined in their pursuit of official recognition for their local chapter, filing an application pursuant to the provisions of Section V of a document entitled "Statement on Rights, Freedoms and Responsibilities of Students" which had been adopted by the administration on May 9, 1969 with the approval of the faculty. (Pet. for Cert., pp. 24a-32a).

In their application for recognition of the local chapter of SDS, the petitioners stated, inter alia, that "ideas without parallel in deeds are empty and ephemeral" and that "SDS would provide *an agency* for integrating thought with action so as to bring about constructive changes in the university, in American life and the world." (A. 92) (emphasis in original).

In considering the application, the Student Affairs Committee at its October 2, 1969 meeting asked Miss Catherine Healy, one of the petitioners, several questions, among them the following:

"(3) Q. How would you respond to issues of violence as other SDS chapters have?

A. Our action would have to be dependent upon each issue.

(4) Q. Would you use any means possible?

A. No, I can't say that; would not know until we know what the issues are.

(7) Q. Could you envision the SDS interrupting a class?

A. Impossible for me to say." (A. 94-95).

At the request of the Committee the petitioners offered a statement that the local chapter ". . . [are] not under the dictates of any national organization." At the October 13, 1969 meeting of the Committee, responding to queries of Committee members, the minutes show petitioner Theodore Tester represented that "there was no such thing as a SDS National", that the petitioners "wanted to be able to pick ideas from several of the factioned groups", and that "the local SDS represents only certain ideas of the national SDS as presently developed." Thereafter, the Committee, on a 6 to 2 vote conditionally approved the application.

On October 30, 1969, President James denied petitioners' request in the following language:

"I am disapproving recognition of a local chapter of Students for a Democratic Society.

Though I have full appreciation for the action of the Student Affairs Committee and the reasons stated in their minutes for the majority vote recommending approval of a local chapter of Students for a Democratic Society, it is my judgment that the statement of purpose to form a local chapter of Students for a Democratic Society carries full and unmistakable adherence to at least some of the major tenets of the national organization, loose and divided though that organization may be. The published aims and philosophy of the Students

for a Democratic Society, which include disruption and violence, are contrary to the approved policy (by faculty, students, and administration) of Central Connecticut State College which states:

> 'Students do not have the right to invade the privacy of others, to damage the property of others, to disrupt the regular and essential operation of the college, or to interfere with the rights of others.'

The further statement on the request for recognition that 'CCSC Students for a Democratic Society are not under the dictates of any National organization' in no way clarifies why if a group intends to follow the established policy of the College, they wish to become a local chapter of an organization which openly repudiates such a policy.

Freedom of speech, academic freedom on the campus, the freedom of establishing an open forum for the exchange of ideas, the freedoms outlined in the Statement on Rights, Freedoms and Responsibilities of Students that "college students and student organizations shall have the right to examine and discuss all questions of interest to them, to express opinion publicly and privately, and to support causes by orderly means. They may organize public demonstrations and protest gatherings and utilize the right of petition" — these are all precious freedoms that we cherish and are freedoms on which we stand. To approve any organization or individual who joins with an organization which openly repudiates those principles is contrary to those freedoms and to the approved 'Statement on the Rights, Freedoms, and Responsibilities of Students' at Central."

At the administrative hearing held by college officials pursuant to an order of Judge Clarie of the United States

District Court Miss Healy, although accompanied by counsel, sat silently by when her previous testimony was received in evidence. (Pet. for Cert., p. 15a). Nor did the petitioners constructively attempt to clarify the ambiguity on its application for which purpose the hearing was ordered.

It is significant Miss Healy did not testify that she was opposed to the use of violence and disruption. It is particularly significant in the light of the written statement offered into evidence at the hearing to the effect that the local chapter would not be affiliated with the "structure" of the national SDS but which carefully avoided disassociating the local chapter from the aims and purposes of the national SDS.

At the administrative hearing, the hearing officer introduced exhibits which effectively rebutted petitioners' statements that they were free from the dictates and influence of the national organization, e.g., Article III, Sec. 3 of the constitution of the National Students for a Democratic Society provides, "Chapters are expected to operate within the broad terms of policies set by the national convention and the national council". (Hearing Officer Ex. G, p. 2107, A. 79).

Also, the reproductions of local and national membership cards clearly showed a continuing relationship between local and national offices and also indicates joint membership record-keeping systems. (H. O. Ex. G, pp. 2170 and 2171, A. 80-84). [In the printing of the separate appendix, language overprinted on the membership cards which make up this exhibit was deleted.

1. The overprint deleted on the membership cards reproduced at A. 80-81 was as follows: "(For Chapter Records)".

2. The overprint deleted on the membership card reproduced at A. 83 was as follows: "(For National Office Records)".

3. The overprint deleted on the membership card reproduced at A. 84 was as follows: "(For Chapter Records)".

Also on the national membership card reproduced at A. 83, the words "Local Dues" and "sum" are incorrect. In lieu thereof the words "national dues $5" should be inserted as well as two boxes to be checked to indicate whether the applicant is a "Renewal" or a "New Member".

Additionally, the documents reproduced at A. 82-84 comprise one page of the exhibit, i.e., p. 2171. They have been incorrectly separated in the Appendix.

In view of the above-noted errors, we refer the Court to the original exhibits so that their real significance can be appreciated.]

We submit that, in the light of the above documented evidence, respondent James understandably did not give credence to the statement of the petitioners that they would not be "under the dictates of any national organization". This decision was not arbitrary or capricious but was reasonable in view of the fact that the plaintiffs did not submit either a local charter or the charter of the National Students for a Democratic Society to substantiate such independent status.

The final decision of defendant James made specific reference to the disruptive activities of Students for a Democratic Society in Columbus, Ohio, schools (H. O. Ex. G, p. 2117, A. 85); statements calling for a "class war in the streets," (H. O. Ex. G, p. 2125, A. 87); a quote of Mark Rudd, "we will have to destroy at times, even violently, in

order to end your power and your system", (H. O. Ex. H, p. 133, A. 90); a Greg Calvert saying, "to build a guerilla force in an urban environment; we are actively organizing sedition." (H. O. Ex. H, p. 133, A. 90); and a note signed by Mike Spiegel indicating a National Students for a Democratic Society policy of requiring certain things of local chapters. (H. O. Ex. N, p. 713, A. 93).

"The *reasonableness* of the inquiries made by President James in a nationwide atmosphere of ticking time bombs can hardly be open to serious question. See *Schenk* v. *United States*, 249 U.S. 47, 52 (1919)." (emphasis in original)

Although the representatives of the local chapter of SDS disavowed any affiliation with the structure of the national organization, they at no time decried its history and philosophy of violence and disruption. Their responses to questions as to their advocacy of violence and disruption were vague and evasive. When confronted with the constitution of the national SDS which one of its number had denied existed, showing control over local chapters, they refused to comment and steadfastly refrained from any statement decrying violence and disruption as a means of advancing the aims and policies of the national SDS or the local chapter.

While the October 30, 1969 memorandum of President James specified that the aims and philosophy of the national SDS included disruption and violence and were contrary to the approved policy of CCSC, the petitioners at no time volunteered to specify which aims and philosophy of the national SDS they adhered to and which they disdained.

The fragmentation of the national SDS into several splinter groups further confused the picture as to which faction the petitioners meant to become affiliated and what the aims and philosophy of that faction happened to be.

It is indeed strange that even though the national SDS was in the middle of an ideological struggle, the petitioners persistently clung to its name.

Under the circumstances, we submit, it was not only reasonable but necessary for President James to question the petitioners as to their affiliation in order to meet his obligation as head of the college. We further submit that when a reasonable doubt was raised as to the ability of the local chapter to operate independently of the national SDS, it was incumbent upon the petitioners to attempt to resolve that doubt. This they made no effort to do. The petitioners failed totally to measure up to the "higher responsibilities" expected of them as student members of the college community.

President James denied official campus recognition to the local chapter of Students for a Democratic Society since, in his judgment, the petitioners had not sustained the burden of showing that their identification with the national corporate name of Students for a Democratic Society would permit them to function with absolute freedom and since the evidence clearly disclosed that the policy and purposes of the national organization advocate the violent overthrow of existing government institutions through the medium of disruptive anarchistic force. (A. 78-91, 93) His action was reasonable and proper under the responsibility and wide discretion vested in him in matters affecting the college. *Brooks* v. *School District*, 267 F.2d 733, 739 (8th Cir.) cert. denied, 361 U.S. 894 (1959).

As the Court held in *Estaban*, supra, p. 1050, "[A]fter all, the test, we feel is that of reasonableness" citing *Dickey* v. *Alabama State Board of Education*, 273 F. Supp. 613, 618.

"It is not required that the college authorities delay action against the inciters until after the riot has started and buildings have been taken over and damaged. *The col-*

lege authorities have the right to nip such action in the bud and prevent it in its inception." Norton v. *Discipline Committee of East Tennessee University,* 419 F.2d 195, 199 (1969). (emphasis added)

"Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values. On the other hand, '(t)he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools,' Shelton v. Tucker, 364 U.S. 479, 487." *Epperson* v. *Arkansas,* 393 U.S. 97, 104 (1968).

We respectfully submit that the action of President James was within his comprehensive authority to prescribe and control conduct on the campus pursuant to constitutional safeguards and should not be disturbed by this Court.

II. THE CONSTITUTIONAL RIGHTS OF THE PETITIONERS HAVE NOT BEEN VIOLATED.

A. The rights of each Petitioner to speak and to associate have not been proscribed.

The respondents recognize that "for good or for ill, the Constitution has come to the campus." Wright, *The Constitution on the Campus,* 22 Vand. L. Rev. 1027, 1033 (1969).

The First Amendment rights of freedom of speech and freedom of assembly are rights secured to persons by the due process clause. *Hague* v. *Comm. for Industrial Organization,* 307 U.S. 496 at 527.

We submit there is nothing in the record of this case to substantiate the claim of Petitioners that either President James or the other named respondents have ever interfered

with or proscribed the petitioners' *individual rights* to voice any political or other opinions or to associate with any persons. Nor have they interfered with or proscribed the organization by the petitioners of a local chapter of Students for a Democratic Society or its meetings anywhere except on the campus of Central Connecticut State College.

The petitioners cited the incident in the Devils' Den of the Student Center on the CCSC campus as proving a prior restraint on their right of association. Their characterization of that incident is not correct, since it was preceded by an announcement of the meeting of the local chapter of SDS which was received in the office of the acting dean of Student Affairs. The memorandum denying the use of college property specifically refers to the "meeting of the CCSC-SDS on Thursday, November 6 at 7:00 P.M. at the Devils' Den." (A. 16). The individuals were never advised that they could not meet together to discuss political beliefs or any other matter on campus — the restriction applied only to meetings of CCSC-SDS.

Accordingly, Judge Clarie appropriately found that the administrative decision of President James, "is not in the same category as a criminal prosecution involving the teaching or espousing of revolution; nor does it attempt civilly to enjoin those utterances which might be considered as an imminent threat to order. . . . All that is denied is the college administration's stamp of approval on the organization as an officially accepted and recognized campus club with its attendant privileges."

Assuming for the sake of argument this Court is persuaded, as the lower courts were not, by petitioners' argument that the decision of President James interfered with their First Amendment rights of free speech and free association, we submit that the alleged interference was permissible under the rationale of this Court in *Tinker*, supra. Consider-

ing the background of violence on college campuses in the Fall of 1969 and the documented participation of SDS in the disruptions; there was clearly more than an "undifferentiated fear or apprehension of disturbance" present in the instant case which could reasonably have led President James to anticipate that the activities of the local chapter of SDS "would substantially interfere with the work of the school or impinge upon the rights of other students." 393 U.S. at p. 509.

B. Petitioners were afforded Due Process.

In his decision of April 24, 1970, District Court Judge Clarie ordered the college to hold an administrative hearing to clarify the ambiguity which he found to exist on the face of the petitioners' application. The court-structured hearing was comprehensive and his suggestions were enumerated by the Court of Appeals as noted at pages 3-5, supra.

The Court of Appeals found that the petitioners, who were at all times represented by legal counsel, "failed to avail themselves of the procedural due process accorded them." (Pet. for Cert., p. 20a).

The petitioners, all college students whose maturity has been recognized by virtue of the Twenty-sixth Amendment to the Constitution of the United States, have forcefully reminded this Court and the respondents that Mr. Chief Justice Burger, writing for the plurality in *Tilton* v. *Richardson*, 403 U.S. 672 (1971) found that "college students are less impressionable and less susceptible to religious indoctrination" than elementary and secondary school students.

In spite of their maturity and legal representation, the petitioners opted to refuse to comply with the suggestions of Judge Clarie in numerous respects as the Court of Appeals found and which are listed at pages 5, 6, supra.

Their disdain for the college administration and the courts is clearly shown by their refusal to constructively participate in the court-ordered administrative hearing to afford them due process. In fact, only two of their number saw fit to attend the hearing held on May 19, 1970, and Miss Healy was the lone petitioner in attendance at the continued hearing on May 25, 1970.

The Court of Appeals also found that legal counsel for the petitioners engaged in "disruptive tactics" during the hearing. (Pet. for Cert., p. 10a).

At the court-ordered hearing opened, counsel for the petitioners objected to the hearing being tape recorded. This obvious harrassment of the hearing officer and low-keyed disruption of the hearing is attributed to the fact that he was concerned that portions of the testimony might be missed. (Brief for Petitioners, footnote 5, p. 6). However, the record completely refutes that assertion. Counsel stated that he would "make all the remarks that have to be made." (A. 30). When asked if he had any witnesses present, his reply was a flip, "Well, whoever is here is here." (A. 30). The record clearly shows that not only had counsel not planned to present any witnesses but also that his insistence on calling President James as a witness was a spur of the moment idea, the only motive for which was harrassment. The statement read by counsel into the record was entered as an exhibit so that its contents were readily available. (A. 36). Under the circumstances, it is inconceivable that, as the hearing commenced, counsel was honestly concerned with preserving "testimony".

Counsel next objected to the fact that President James was not presiding at the hearing so that his evaluation of the "evidence" would not be firsthand but would be from a written record. (A. 34). When he was reminded that Judge Clarie had specified President James could designate a hearing officer to conduct the hearing and Dean Judd had been

so designated, his reply was, "I take the position that the hearing is not properly conducted notwithstanding Judge Clarie's statement." (A. 34). However, the only "evidence" which he contemplated offering at the commencement of the hearing was the written statement noted above, so the petitioners have advanced a new reason for his objection — a legitimate desire that respondent James hear their "argument" personally. (Brief for Petitioners, footnote 5, p. 7).

Counsel's displeasure with the conduct of the hearing resulted in several outbursts which the Court of Appeals found to be out of place in the "climate of respectful civility" ordered by the District Court. These outbursts are attributed by petitioners to counsel's exasperation which it is claimed was precipitated by the hearing officer. (Brief for Petitioners, footnote 5, p. 7). This view can hardly be given credence in view of the fact that the intransigence of counsel was the only area of agreement in the decision of the appellate jurists. The dissenting judge flatly indicted counsel, stating, "It is true, as the majority makes plain, that the applicants' counsel did try the patience of Dean Judd as hearing officer, . . ." (A. 38a).

III. THIS COURT HAS NEVER CONSIDERED THE PRECISE ISSUE IN THIS CASE.

This is a case of first impression with this Court.

No student group is entitled, per se, to official college recognition.

The extensive research of the dissenting Judge below succeeded in uncovering only one unreported case in which a state trial court upheld the denial of official recognition of an SDS chapter. *Saxton* v. *Bd. of Regents*, No. 123-165, Cir. Ct. Dane County, Wisc., May 21, 1968.

In the interim, since the decision of the Circuit Court, two federal courts have considered the denial of recognition to student organizations. In each case, the court ruled that the student organization was entitled to official campus recognition and distinguished each case from the present case which was cited in the decisions.

In *ACLU of Va.* v. *Radford College,* supra, the court held the petitioners were entitled to recognition as a campus chapter of ACLU. In considering the issue, the court very properly considered the background of the national organization with which the local chapter was affiliated noting at p. 899, "The ACLU is a well (but in many places unfavorably) known national organization with countless chapters, many of which are on-campus student groups." In distinguishing that case from the instant case the court said at p. 897, "The *Healy* case is instructive but it is not determinative of the controversy at hand. There is no allegation in this case that the ACLU is an organization which seeks to use violent or unlawful means to accomplish its goals."

In *University of Southern Mississippi Chapter of the Mississippi Civil Liberties Union* v. *Univ. of S. Mississippi,* _____ F.2d _____ (5th Cir. 1971), the court ruled that the local CLU chapter was entitled to college recognition. Both the district and appellate courts significantly considered the history of the state and national parent organizations stating in footnote 2, "The district court found: 'Of the reasons offered for the denial of the charter, the Court does not find sufficient merit in any to justify sustaining the University's position except for the barely tenable reasons based on the expressed threats of litigation by the local chapter and this history of the litigation waged by the state and national organizations.' " In distinguishing that case from the instant case the court noted, ". . . certain members of SDS have advocated disruption as a means of achieving its

goals. Second, in *Healy*, SDS actually demonstrated a refusal to abide by university procedures for dispute resolution when it behaved defiantly during a court-structured hearing to determine its status. The denial in *Healy* was therefore based at least in part upon some evidence of actual misbehavior. . . ."

The above two cases affirmatively support the respondents' position that designating itself as a local chapter of SDS very definitely indicated affiliation with the national organization warranting the inquiries of President James as to the extent of such affiliation. They also support the decision of President James in denying recognition of the local chapter of SDS. However, whether the cases were properly decided on First Amendment grounds is questionable, since the ACLU does not claim to be a political organization.

In *Tinker*, supra, on which the petitioners place great reliance, this Court held that "First Amendment rights, applied in the special characteristics of the school environment are available to . . . students." It seems incongruous to us that the petitioners cite *Tinker* as supporting their First Amendment position, yet they completely ignore the fact that this Court specifically singled out educational institutions as having "special characteristics" which distinguish their functions from the functions of municipalities. We submit the argument advanced by the petitioners that educational institutions should be accorded the same standing as a municipality must fall before the above rationale of this Court.

In view of the special characteristics of the school environment, this Court, in *Tinker*, recognized the need of the school administrators to retain their comprehensive authority to control conduct in the schools and fashioned the test on whether "*. . . the school authorities had reason to anticipate that the wearing of armbands would substantially interfere*

with the work of the school or impinge upon the rights of other students." 393 U.S. at p. 509. (emphasis supplied).

The above-quoted language reserves to the administrator the right to prevent what the Court labeled in *Schenk,* supra, "serious substantive evil" as long as he does not act unreasonably. This reservation of authority to prevent disruption and violence on campus rather than waiting until it occurs and then punishing the wrongdoers would appear to be administratively sound.

It is also supported by this Court which held in *Speiser* v. *Randall,* 357 U.S. 513 at 527, "[W]here the attempt is to protect against an evil within the sphere of state concern, the rule is that *a proscription which only tangentially touches a protected freedom will be sustained.*" (emphasis added)

The focus of all the cases relied upon by petitioners in which the framework of reference is an educational environment is concentrated on the statement of the court in *Estaban,* supra, at p. 1090, "After all, the test, we feel, is that of reasonableness."

Certainly the respondents have satisfied the test of reasonableness and respectfully request the Court to so find.

The petitioners have voiced considerable concern over the fact that the special political perspective of SDS is now absent from the campus of CCSC. The petitioners have only themselves to blame for this state of affairs since it was their intransigence which deprived their organization of official recognition. The rest of us can breathe a little easier in the knowledge that an organization, the members of which have defiantly refused to renounce violence and disruption, has been denied the privileged position of acting within the college community as an officially approved campus organiza-

tion because President James measured up to his responsibilities.

The petitioners have advanced the proposition that this case gives the Court an opportunity to implant the First Amendment firmly on the college campus. We trust the Court will not be misled by the petitioners' subtle rhetoric. To adopt their theory of the case would effectively strip the college administrators of any authority to question whether a particular group has aims and policies which are not compatible with the educational objectives of the college.

As the district Court said in *Zemel* v. *Rusk*, 228 F. Supp. 65, 71 (1964), "Personal vigilance to safeguard freedom should never be permitted to become a sword used for the destruction of the edifice it protests it is protecting."

CONCLUSION

For any or all of the reasons set forth above, it is respectfully submitted that the decision of the lower Court should be affirmed.

Respectfully submitted,

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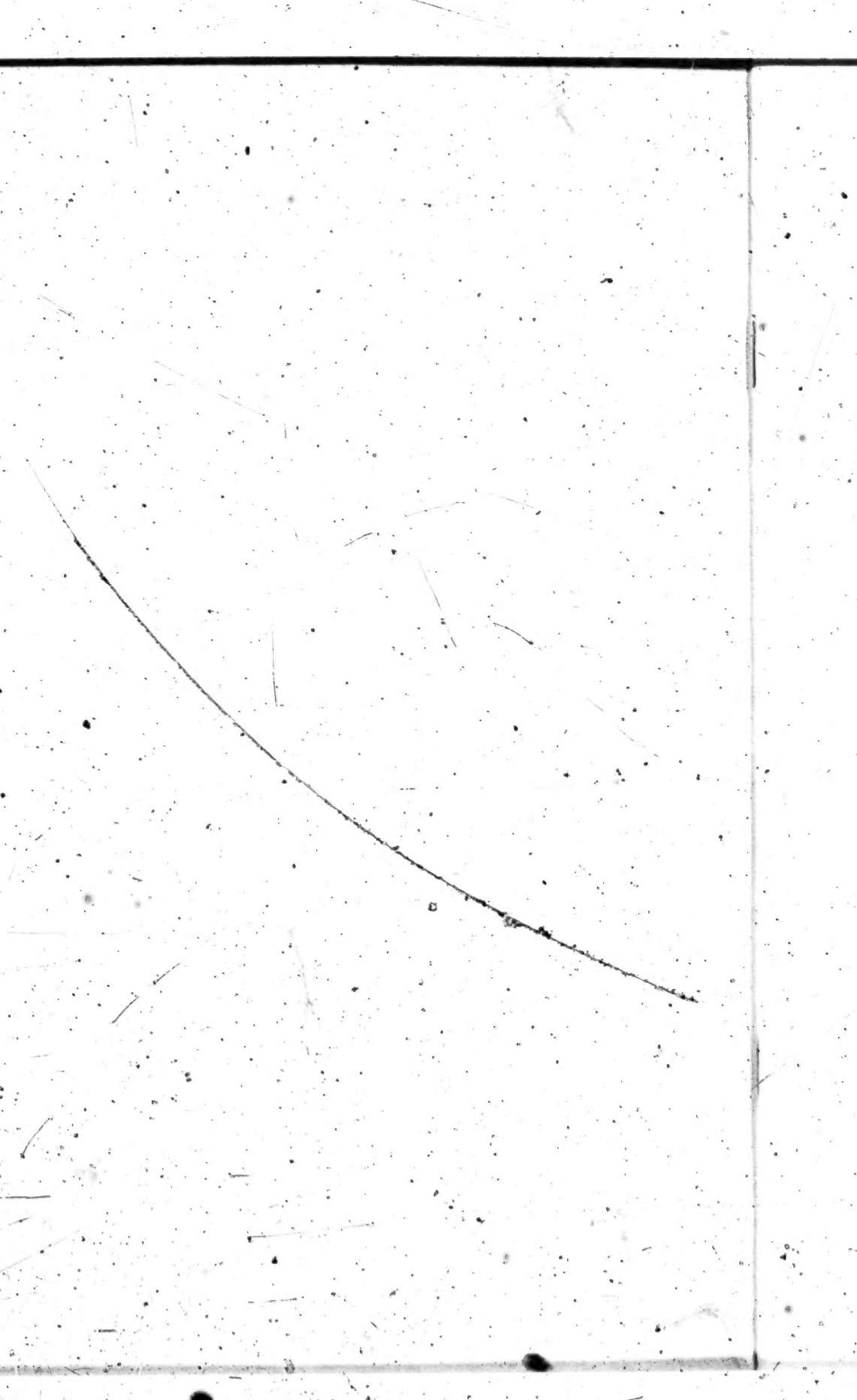

In the Supreme Court of the United States

OCTOBER TERM, 1971

Supreme Court, U.S.
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No. 71-452

CATHERINE J. HEALY, et al.,
Petitioners,

v.

F. DON JAMES, et al.,
Respondents.

Amicus Curiae Brief of the Board of Trustees, California State Colleges.

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SUBJECT INDEX

	Page
Interest of Amicus Curiae	1
Preliminary Statement	2
Summary of Argument	3
Argument	4
I. This Case Must Be Considered in Light of the Special Characteristics of the School Environment	4
II. The Courts Have Given College Administrators Broad Discretion to Manage Campus Affairs So As to Achieve the Educational Goals of the Institution	6
A. Use of College Facilities and Resources	6
B. Prevention of Disruptive Conduct	7
C. Prohibition of Fraternities	9
D. Parietal Rules	9
E. Rules Regulating the Conduct of Group Protests and Demonstrations	10
III. A College May Impose Reasonable Standards and Conditions Upon the Granting of Recognition to Student Organizations	10
IV. The Freedoms of Speech and Association Are Not Absolute but Are Subject to Reasonable Restrictions for the Protection of Legitimate Public Interests	13

Page

V. The Interest of Petitioners in Obtaining Official Recognition Must Be Balanced Against the Obligation of the State to Educate Its Students In an Orderly and Disciplined Manner 15

VI. The Rules and Policies Which the College Seeks to Enforce Are Reasonable 17

VII. It Is Not Unreasonable to Require That a Student Organization Seeking Recognition Fully Disclose Its Purposes and Plans 21

Conclusion 23

TABLE OF AUTHORITIES CITED

Cases	Pages
Adderley v. Florida, 385 U.S. 39 (1966)	17, 20
American Civil Liberties Union of Va. v. Radford College, 315 F. Supp. 893 (W.D.Va. 1970)	10, 11
Barker v. Hardway, 283 F. Supp. 228 (S.D.W.Va. 1968); affrm'd per curiam 399 F.2d 638 (1969) Cert. denied, 394 U.S. 905 (1969)	8
Burnside v. Byars, 363 F.2d 744 (5th Cir. 1966)	6, 15
Commonwealth v. Stotland, 214 Pa. Super. 35 (1969) appeal dismissed 398 U.S. 916 (1970)	13, 15, 16
Cox v. Louisiana, 379 U.S. 536 (1965)	7, 17, 20, 21
Dickey v. Alabama State Board of Education, 273 F. Supp. 613 (M.D. Ala. 1967) Appeal dis. as moot, 402 F.2d 515 (5th Cir. 1968)	12
Dunbar v. Governing Board of Grossmont Junior College Dist., 275 Cal. App. 2d 14 (1969)	12
Esteban v. Central Missouri State College, 415 F.2d 1077 (8th Cir. 1969)	7
Estes v. Texas, 381 U.S. 532 (1965)	13, 20
Goldberg v. Regents of the University of California, 248 Cal. App. 2d 867 (1967)	5, 13, 16
Healy v. James, 445 F.2d 1122 (2d Cir. 1971)	2, 3, 21
Hughes v. Caddo Parish Sch. Board, 57 F. Supp. 508 (W.D.La. 1944); affirmed 323 U.S. 685 (1945)	9
Konigsberg v. State Bar of California, 366 U.S. 36 (1961)	16, 22
Law Students Research Council v. Wadmond, 401 U.S. 154 (1971)	23
Los Angeles Teachers Union v. Los Angeles City Bd. of Ed., 71 Cal. 2d 551 (1969)	13, 14

Pages

McConnell v. Anderson, 451 F.2d 193 (8th Cir. 1971) Petn. for cert. filed 40 U.S.L.W. 3369 (U.S. Jan. 31, 1972) (No. 978) 13

Moore v. Student Affairs Committee of Troy State Univ., 284 F. Supp. 725 (M.D.Ala. 1968) 10

National Strike Inform. Center v. Brandeis Univ. of Walton, Mass., 315 F. Supp. 928 (D.Mass. 1970) 7

Pratz v. Louisiana Polytechnic Inst., 316 F. Supp. 872 (W.D.La. 1970); affirmed 401 U.S. 1004 (1971) 9

Schwartz v. Schuker, 298 F. Supp. 238 (E.D.N.Y. 1969) 15, 16, 20

Scoville v. Board of Ed. of Joliet TP. H.S. Dist., 425 F.2d 10 (7th Cir. 1970); cert. denied 400 U.S. 826 (1970) 15

Sellers v. Regents of the Univ. of California, 432 F.2d 493 (9th Cir. 1970); cert. denied 401 U.S. 981 (1971) 6, 14, 17, 19, 20, 23

Sword v. Fox, 446 F.2d 1091 (4th Cir. 1971); cert. denied 40 U.S.L.W. 3279 (U.S. Dec. 14, 1971) (No. 453) 10

Tinker v. Des Moines Indep. Com. School Dist., 393 U.S. 503 (1969) 11, 12, 16, 19

Waugh v. Board of Trustees of the Univ. of Mississippi, 237 U.S. 589 (1915) 9

Webb v. State Univ. of New York, 125 F. Supp. 910 (N.D.N.Y. 1954); appeal dismissed 348 U.S. 685 (1945) 9

Zanders v. Louisiana State Board of Education, 281 F. Supp. 747 (W.D.La. 1968) 8

STATUTES

Pages

50 U.S.C. § 462(a) 14

ARTICLES

Campus Freedom and Order, 45 Denver L.J. 502 (1968) 5, 20

Governance of the University: Rules, Rights, and Responsibilities, 54 Calif. L. Rev. 27 (1966) 8 Note, 81 Harv. L. Rev., 1045, 1130-31 (1968) 4

In the Supreme Court of the United States

OCTOBER TERM, 1971

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Amicus Curiae Brief of the Board of Trustees, California State Colleges

---

INTEREST OF AMICUS CURIAE

The Board of Trustees of the California State Colleges is the governing body of a system consisting of nineteen separate campuses located throughout the State of California, serving approximately 263,000 students and employing approximately 14,900 faculty.

California colleges and universities, including certain of the California State Colleges, have been the scene of some of the most severe and destructive of the outbreaks of violence and disruption which have occurred in recent years on

college campuses. With the experience of these events in mind, the Board of Trustees of the California State Colleges has a vital interest in any court decision which may have an effect upon the ability of college administrators to direct and control campus activities.[1]

PRELIMINARY STATEMENT

Petitioners, students of a state college and members of a "local chapter" of Students for a Democratic Society (SDS) seek an order compelling the president of their college to officially recognize the chapter as a campus student association. According to petitioners' brief (p. 2) official recognition would carry with it the right to use campus facilities for meetings and other activities and to seek financial support from student body funds. Presumably it also would carry the right to use the college's name on the organization's publications, letterhead, and/or publicity releases.

The president of the college declined to grant official recognition for reasons which are explained in a thoughtful and objective document which is reproduced in a footnote at page 1124 of the Court of Appeals' opinion.[2]

Briefly stated, the president's reasons primarily were concerned with the petitioners' failure to provide reasonable assurances that their organization would conform to policies which had been promulgated with the approval of students, faculty, and administration for the conduct of student activ-

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1. On January 25, 1972, the Board adopted the following resolution:

Amicus Curiae Participation—*Healy v. James* (RGPA 72-03) RESOLVED, By the Board of Trustees of the California State Colleges, that General Counsel take necessary action to file a brief *amicus curiae*, on behalf of the California State Colleges, in support of the respondents in the case of *Healy v. James*, now pending in the United States Supreme Court.

2. *Healy v. James*, 445 F.2d 1122 (2d Cir. 1971).

ities and associations. These policies are set forth in a document entitled "Statement on Rights, Freedoms and Responsibilities of Students" (appendix to the opinion of the Court of Appeals, *Healy v. James,* 445 F.2d 1122, 1132 (2d Cir. 1971).

Petitioners' statement of the "Question Presented" appears to assume the factual conclusion that petitioners want the court to reach. In the view of amicus curiae, the case directly involves the degree of discretion and autonomy which the law extends to those who are charged with the extraordinary responsibilities attendant to the successful operation of a modern-day college or university. The question presented, therefore, should be stated as follows:

> Whether the public interest in preserving the essential educational environment is sufficient to justify allowing a college administrator to withhold official recognition of a student organization for failure to furnish satisfactory assurances that the organization will conform to reasonable rules governing the conduct of student activities.

SUMMARY OF ARGUMENT

A basic flaw in petitioners' legal argument is the assumption that public colleges and universities are subject to the same degree of judicial control as are those conventional government agencies which exercise regulatory powers over the rights and property of individual citizens. This assumption cannot be sustained in light of the overwhelming judicial precedent.

Since higher education is committed to the principle that the truth will emerge from a free interchange of ideas, college and university administrators have the clear responsibility to take all reasonable and necessary measures not only to protect and promote free expression, but also to preserve an atmosphere which is conducive to intellectual pursuits.

Organizations which are dedicated, or which reasonably appear to be dedicated, to the notion that a minority is justified in imposing its will upon the majority by violent means, have an especially heavy burden when they seek to gain formal acceptance in the academic community. A college administrator would be derelict in his duty if he failed to require that the representatives of such an organization provide satisfactory assurance they would not misuse the benefits of official recognition to the detriment of the college community.

The administrative action which is challenged by the petitioners here was reasonable under the circumstances, was within the broad discretion of the college officials, and did not violate any First Amendment right of the petitioners.

ARGUMENT

I. This Case Must Be Considered in Light of the Special Characteristics of the School Environment

Petitioners, ignoring the established principle that stricter rules are justified on campus than in society as a whole (*see, e.g.* Note, 81 *Harv. L. Rev.* 1045, 1130-31 (1968)), have based their legal argument to a substantial degree on court decisions which relate to non-academic situations. For example, at pages 12 and 13 of petitioners' brief it is argued that the university should be required to conform to the same constitutional norms as municipalities and other governmental agencies. In support of the argument, petitioners cite cases dealing with regulation of the public use of parks, state capitol grounds, municipal bus stations, libraries, shopping centers, and other areas dedicated to the general public use.

Informed commentators repeatedly have emphasized that a college or university is a unique community with a special

and limited purpose. It is not a microcosm of the larger community (*see e.g.*, Wilson, *Campus Freedom and Order,* 45 *Denver L. J.* 502, 503 (1968)). The rules of the university should be designed to promote its special function — discovering, developing and disseminating knowledge — in such a way as to benefit society at large. To this end the university has the power and obligation to preserve the property under its control for the use to which it is lawfully dedicated.

In a recent and frequently cited decision of the California Court of Appeal, *Goldberg v. Regents of the Univ. of California,* 248 Cal. App. 2d 867. (1967), the court stated:

> "Historically, the academic community has been unique in having its own standards, rewards and punishments. Its members have been allowed to go about their business of teaching and learning largely free of outside interference. To compel such a community to recognize and enforce precisely the same standards and penalties that prevail in the broader social community would serve neither the special needs and interests of the educational institutions, nor the ultimate advantages that society derives therefrom. Thus, in an academic community, greater freedoms and greater restrictions may prevail than in society at large, and the subtle fixing of these limits should, in a large measure, be left to the educational institution itself." (248 Cal. App. 2d at 880.)

The *Goldberg* decision upheld the action of university authorities in dismissing and suspending certain students for violation of university policy on student conduct. The conduct which prompted the disciplinary measures consisted of the loud and repeated use of objectionable language at one of the main entrances to the campus. There was no substantial evidence of actual disruption of classes, destruction of property, or other violence. The court's decision was based upon the rule that reasonable restrictions on the

freedoms of speech and assembly are valid when imposed by agencies which have an interest in maintaining good order and proper decorum. On page 879 of 248 Cal. App. 2d the court said:

> "Broadly stated, the function of the University is to impart learning and to advance the boundaries of knowledge. This carries with it the administrative responsibility to control and regulate that conduct and behavior of the students which tends to impede, obstruct or threaten the achievements of its educational goals. Thus, the University has the power to formulate and enforce rules of student conduct that are appropriate and necessary to the maintenance of order and propriety, considering the accepted norms of social behavior in the community, where such rules are reasonably necessary to further the University's educational goals."

II. The Courts Have Given College Administrators Broad Discretion to Manage Campus Affairs so as to Achieve the Educational Goals of the Institution

Although in some cases courts have seen fit to intervene in academic matters in order to protect the constitutional rights of individuals, the reported decisions consistently acknowledge that college officials are obligated to maintain the stability and decorum of the educational process, and must be allowed a very broad discretion in formulating and implementing policies and regulations. *See, e.g., Burnside v. Byars,* 363 F.2d 744 (5th Cir. 1966). The discussion which follows will survey some of the areas in which the courts have allowed public colleges a great degree of latitude and flexibility — greater than would ordinarily be permitted other governmental agencies.

A. USE OF COLLEGE FACILITIES AND RESOURCES

In *Sellers v. Regents of the Univ. of Calif.,* 432 F.2d 493 (9th Cir. 1970) *cert. denied* 401 U.S. 981 (1971) a student

organization was denied the use of a university facility because it was the university's opinion that the proposed activity would violate federal law. The court indicated that the denial of the use of the facility did not raise a free speech issue:

> "Here appellee in the exercise of its power to govern the university in a pursuit of a valid interest in that area, at most, has only incidentally infringed on First Amendment freedoms. Such being the case the regulation is not constitutionally infirm, *Cox v. Louisiana*, 379 U.S. 559, 85 S. Ct. 476, 13 L. Ed. 2d 487 (1965). Moreover, any chilling effect on this particular form of protest that might flow from a good faith enforcement of this regulation would not constitute an impermissible invasion of protected freedom [citation]."

In a somewhat similar case, *National Strike Inform. Center v. Brandeis Univ. of Waltham, Mass.*, 315 F. Supp. 928 (D. Mass. 1970) the court held the university had no legal obligation to subsidize a student association. The association had demanded that the university's computer, typewriters and similar equipment be made available to it. The court stated (p. 930):

> ". . . I find that a student association has no more right to demand that these facilities be made available to it than to demand that the President make his secretary available, or that he make campus maintenance trucks and other vehicular equipment available to serve the purposes of a student group."

B. PREVENTION OF DISRUPTIVE CONDUCT

The courts, without exception, have upheld the right of institutions of higher education to control and prevent disruption upon the campus. In *Esteban v. Central Missouri State College*, 415 F.2d 1077 (8th Cir. 1969) *cert. denied* 338 U.S. 965 (1970) the Court of Appeals for the Eighth Circuit said at page 1087:

> "It is obvious that where there is actual or potentially disruptive conduct, or disorder or disturbance by the petitioners, or interference with the work of the school or of the rights of other students, or threat or acts of violence on the school premises, or substantial disorder, then reasonable action by school authorities is constitutionally permitted."

Barker v. Hardway, 283 F. Supp. 228 (S.D.W.Va. 1968) *affirmed per curiam* 399 F.2d 638 (4th Cir. 1968) *cert. denied* 394 U.S. 905 (1969) involved campus protests which turned into violent demonstrations. The court said (at p. 238):

> "True it is that enrollment in school does not mean the student surrenders any of his constitutional rights. But by the same token, that fact does not give him the right to abuse and harass the administrators of the institution or engage in conduct detrimental to its wellbeing or which may tend to deprive other students of the right to a peaceful atmosphere in which to pursue their ambition for an education."

A college or university need not wait until it is torn by strife and disruption to take positive steps to protect itself. As was quoted by the court in *Zanders v. Louisiana State Board of Education,* 281 F. Supp. 747 (W.D.La. 1968):

> "The rights of freedom of assemblage and freedom of expression must not be exercised in such a way as to interfere with the operation of classrooms and laboratories, with the availability and use of libraries and other facilities, or with the conduct of the university's administrative responsibilities. Reasonable regulation to prevent such interference is clearly within the rule-making jurisdiction of the university."*

*Quoted from Sherry, *Governance of the University: Rules, Rights, and Responsibilities,* 54 CALIF.L.REV. 27 (1966).

C. PROHIBITION OF FRATERNITIES

The court in *Waugh v. Board of Trustees of the University of Mississippi,* 237 U.S. 589 (1915) held that a state-supported college may require a student who has been a member of a Greek letter fraternity to renounce his affiliation with such fraternity without infringing upon constitutional rights. See also *Hughes v. Caddo Parish School Board,* 57 F. Supp. 508 (W.D.La. 1944) *affirmed* 323 U.S. 685 (1945).

Webb v. State Univ. of New York, 125 F. Supp. 910 (N.D.N.Y. 1954) *appeal dismissed* 348 U.S. 867 (1954) found no encroachment upon the freedom of assembly or the right to equal protection of the law when the university banned social organizations with outside affiliations. An appeal to this Court was dismissed for lack of any substantial federal question. 348 U.S. 867 (1954).

D. PARIETAL RULES

In *Pratz v. Louisiana Polytechnic Institute,* 316 F. Supp. 872 (W.D.La. 1970) *affirmed* 401 U.S. 1004 (1971) a three-judge court upheld parietal regulations of a state-supported institution of higher education requiring students to live and eat their meals in facilities provided by the college. The court found no unlawful infringement of the right to travel, right of privacy, relationship with family or freedom of association.

Parietal rules of the sort approved in *Pratz* place a far greater restriction upon students than does a decision not to accord formal recognition to a student organization. Since both types of restrictions are designed to foster the desirable "educational environment", it is reasonable to conclude that, if parietal rules are constitutional, so is the action challenged by petitioners here.

In *Moore v. Student Affairs Comm. of Troy University,* 284 F. Supp. 725 (M.D.Ala. 1968) which dealt with the search of a student's dormitory room, the court stated:

> ". . . reasonable right of inspection is necessary to the institution's performance of . . . duty even though it may infringe on the outer boundaries of a dormitory student's Fourth Amendment rights . . ."

E. RULES REGULATING THE CONDUCT OF GROUP PROTESTS AND DEMONSTRATIONS

In *Sword v. Fox,* 446 F.2d 1091 (4th Cir. 1971) *cert. denied* ..... U.S. ..... (1971) 40 U.S. L.W. 3279 (U.S. Dec. 14, 1971) (No. 453) the court upheld rules restricting campus protests and demonstrations. The rules were challenged for vagueness and overbreadth. With reference to this challenge, the opinion states at page 1099:

> "This claim focuses upon the specificity required in college rules and regulations. . . . [T]here is a sharp divergence in the cases . . . but *all seem to agree that the same specificity is not required in college rules as is necessary in criminal statutes.* [Citations.]" (Emphasis added.)

III. A College May Impose Reasonable Standards and Conditions Upon the Granting of Recognition to Student Organizations

In *ACLU of Virginia v. Radford College,* 315 F. Supp. 893 (W.D.Va. 1970), a decision upon which petitioners place great reliance, the court said:

> "Student organizations do not have an unqualified right to be recognized by a college administration. College officials properly have wide discretion in operating the school and in determining what actions are most compatible with its educational objectives."

The *Radford College* decision holds that the college officials there did not have a clear set of standards by which to determine whether the activities of the ACLU were or were

not compatible with the goals of the institution (315 F. Supp. at p. 899). The court specifically distinguishes the present case[3] by pointing out that the ACLU, unlike the SDS, is not an organization which seeks to use violent or unlawful means to accomplish its goals (315 F. Supp. at p. 897).

Petitioners' reliance upon *Radford College*, thus is misplaced, even though the District Court decision in *Radford* appears to offer some support for petitioners' argument that the withholding of formal campus recognition is equivalent to a prohibition of "pure speech." It is submitted that this argument will not withstand critical analysis, because formal recognition of a student organization involves much more than the right to use college facilities for meetings and other activities which may be protected by the First Amendment. It also encompasses the privilege of using the college's name and the opportunity of receiving student body funds. Recognition in this context so closely identifies the organization with the educational institution that it is not only reasonable, but imperative, that the organization comply with the policies and rules of the institution.

Petitioners argue that this case is controlled by the Court's decision in *Tinker v. Des Moines School Dist.*, 393 U.S. 503 (1969). It is not. The conduct involved in *Tinker* was found to be "closely akin to 'pure speech'" (393 U.S. at p. 503). The case did not involve an application for official sanction and approval by the school, but only a request that the students be permitted to express their views peacefully by wearing armbands. There was no reason at all to suspect that the petitioning students in *Tinker* might use school facilities to organize or carry out illegal or disruptive

3. At the time of the *Radford College* decision, the District Court opinion in the present case was current (*Healy v. James*, 311 F. Supp. 1275 (D.Conn. 1970).

actions. Finally, the *Tinker* situation was much less complex than that presented by the instant case because the school administrator in *Tinker* was faced only with a single request on behalf of a few students who fully disclosed their plans and purposes. He did not have to speculate as to what the future activities of the group would be, nor did he have to concern himself with the possibility that student funds or the school name would be used in connection with improper activities. By comparison, the college president whose action is challenged here had a much more difficult and complex problem before him than did the school administrator in *Tinker*. It is only reasonable that the administrator who faces the more difficult problem should be given a greater degree of discretion in resolving it.

Petitioners argue that the college should be required to recognize their organization because breaches of discipline are subject to punishment. Petitioners' brief characterizes the action taken by the president of the college as a "prior restraint" which they argue is wholly violative of the Constitution in the present context. Again, the pertinent court decisions do not support petitioners' argument.

In *Dunbar v. Governing Board of Grossmont Junior College Dist.*, 275 Cal. App. 2d 14 (1969) the court stated:

> "Undoubtedly the [college] has a broader discretion in controlling the speakers and the content of the speeches in a forum set up as part of the school's educational program than it would have had the forum been open to the public. This is so because First Amendment rights must be applied 'in light of the special characteristics of the school environment.'" (citing *Tinker v. Des Moines School Dist.*, 393 U.S. 503 (1969)).

In *Dickey v. Alabama State Board of Education*, 273 F. Supp. 613 (M.D. Ala. 1967), *appeal dismissed as moot*, 402 F.2d 515 (5th Cir. 1968) the court stated:

"This court recognizes that the establishment of an educational program requires certain rules and regulations necessary for maintaining an orderly program and operating the institution in a manner conducive to learning. . . . Courts may only consider whether rules and regulations that are imposed by school authorities are a reasonable exercise of the power and discretion vested in those authorities. Regulations and rules which are necessary in maintaining order and discipline are always considered reasonable."

IV. The Freedoms of Speech and Association Are Not Absolute But Are Subject to Reasonable Restrictions for the Protection of Legitimate Public Interests

The rights of expression which are guaranteed by the First and Fourteenth Amendments are always subject to regulation as to the time, place, and manner of the exercise of such rights, so long as the regulation is reasonably related to a valid public purpose. *Estes v. Texas,* 381 U.S. 532, 539-40 (1965); *Commonwealth v. Stotland,* 214 Pa. Super. 35 (1969) *appeal dismissed for want of a substantial federal question* 398 U.S. 916 (1970).

A public institution of higher learning has an "inherent power" to maintain order on the campus and to exclude therefrom those who are detrimental to its well being. *McConnell v. Anderson,* 451 F.2d 193 (8th Cir. 1971) *petition for cert. filed,* 40 U.S. L.W. 3369 (U.S. Jan. 31, 1972) (No. 978); *Goldberg v. Regents of the Univ. of Calif.,* 248 Cal. App. 2d 867, 879 (1967). In enforcing such rules, of course, it is essential that the university carefully differentiate between those who are ". . . violent and heedless of the rights of others as they assert their cause and those whose concerns are no less burning but who seek to express themselves through peaceful, orderly means." (*Los Angeles Teachers' Union v. Los Angeles City Board of Education,*

71 Cal. 2d 551, 565 (1969)). Unless the action of the college is patently arbitrary, however, the courts should permit the college administrators a broad discretion in making such judgments.

In *Sellers v. The Regents of the Univ. of Calif.*, 432 F.2d 493 (9th Cir. 1970) *cert. denied* 401 U.S. 981 (1971), the court affirmed a denial of injunctive and declaratory relief to a group of students representing a campus organization. The students contended the university had unlawfully refused them permission to use a campus building for purposes of holding an assembly to demonstrate support for persons who have refused induction into the armed services. The application for permission to hold the assembly expressly disclaimed any intention to violate the law. (432 F.2d at p. 496.) The university, acting upon advice of counsel, had denied the application on the ground that it was foreseeable that a violation of 50 U.S.C. § 462(a) would occur. Section 462(a) makes it unlawful to counsel, aid or abet another to refuse or evade service in the armed forces.

In upholding the action of the university, the Court of Appeals stated:

> "... Beyond doubt, appellee in its role as administrator of the University system has a vital interest in preventing illegal activity on the campus. ...
>
> "....
>
> "... We express no opinion on the actual applicability of § 462(a) or on its constitutionality. In arriving at this conclusion, we reject the appellants' contention that the standards for immediate *de novo* judicial review required in censorship of 'obscenity' cases should here apply. [Citations] It is our considered opinion that *the judicial function, as applied to those in charge of governing the campuses of our universities, should be far less inclusive* than the role played by the courts in review of state censorship of an 'obscenity,' a

censorship that reaches into private homes and businesses." (432 F.2d at p. 499.) (Emphasis added.)

In *Schwartz v. Schuker*, 298 F. Supp. 238 (E.D.N.Y. 1969), it was held there was no unlawful infringement of the right of free speech where a high school student was suspended for violating the principal's instructions not to distribute copies of an off campus newspaper entitled "High School Free Press" which contained criticisms of the school administration. The court stated that the incidental infringement of First Amendment rights was justified by the ". . . duty and obligation of the state to educate students in an orderly and decent manner. . . ." 298 F. Supp. at p. 242.

These and the other cases cited herein establish beyond dispute that the state has an important interest and an obligation to educate its students in an orderly manner and to take reasonable precautions designed to preserve the necessary climate for teaching and learning.

V. The Interest of Petitioners in Obtaining Official Recognition Must Be Balanced Against the Obligation of the State to Educate Its Students in an Orderly and Disciplined Manner

When it is claimed that enforcement of a college or university regulation will infringe rights of free expression, the proper test to be applied is one of balancing the private interest in free expression against the public interest in furthering the goals of public higher education. *Scoville v. Board of Ed. of Joliet Township H.S. Dist.*, 425 F.2d 10, 14 (7th Cir. 1970) *cert. denied* 400 U.S. 826 (1970); *Burnside v. Byars*, 363 F.2d 744, 748 (5th Cir. 1966). While the freedoms of expression and of association are highly valued as fundamental to our society, these rights may be subjected to direct regulation if there is a compelling governmental interest which overrides the interest of the individual in the activities which are restricted. *See Common-*

wealth v. Stotland, 214 Pa. Super. 35 (1969) *appeal dismissed for want of a substantial federal question* 398 U.S. 916 (1970).

That the state's interest in protecting the integrity of its educational system qualifies as a "compelling" interest cannot be disputed. *Tinker v. Des Moines School Dist.*, 393 U.S. 503, 507 (1968); *Schwartz v. Schuker*, 298 F. Supp. 238, 242 (E.D.N.Y. 1969); *Goldberg v. Regents of the Univ. of Calif.*, 248 Cal. App. 2d 867, 879 (1967).

In *Konigsberg v. State Bar of California*, 366 U.S. 36, (1961), this Court stated:

> "... general regulatory statutes, not intended to control the content of speech but incidentally limiting its unfettered exercise, have not been regarded as the type of law the First or Fourteenth Amendment forbade Congress or the States to pass, when they have been found justified by subordinating valid governmental interests, a prerequisite to constitutionality which has necessarily involved a weighing of the governmental interest involved." (366 U.S. at pp. 50-51.)

The compelling state interest in protecting the educational system was not the only interest which the college sought to protect by the action which petitioners challenge. Also involved was the fundamental right of the other students of the college to be free from interference with their freedoms of expression. The discouragement of violence and of other methods which interfere with the rights of others is a legitimate goal. The college obviously is justified in exercising extraordinary precaution when there is *any* substantial danger of the violent suppression of free expression by those who will not hesitate to use such methods to achieve their purposes.

The action of the college here was not an absolute prohibition of speech or assembly. It was a minimal restriction which clearly qualifies as a "time, place and manner" rule.

Reasonable rules regulating the time, place, and manner of speech and assembly do not violate the constitution. *Cox v. Louisiana*, 379 U.S. 536, 559 (1965); *Adderley v. Florida*, 385 U.S. 39 (1966); *Sellers v. Regents of the Univ. of Calif.*, 432 F.2d 493 (9th Cir. 1970), *cert. denied*, 401 U.S. 981 (1971).

Since the college's action clearly was designed to protect a "compelling" public interest, and since the restriction imposed is of the type which is constitutionally valid under proper circumstances, the inquiry turns to the nature and substantiality of the private interest which is to be weighed in the balance.

As noted, the petitioners have been deprived of nothing more than the benefit of college facilities, student body funds, and the use of the college's name in connection with the activities of their organization.

On balance, the public interest in preserving an atmosphere conducive to learning manifestly outweighs any impairment of private rights or interests which has resulted from the college's action.

The only question which remains is whether the action taken was reasonably related to the protection of the public interest involved. *Cox v. Louisiana, supra.* For reasons which are explained in the final sections of this brief, it is submitted that such a reasonable relationship has been amply demonstrated by the respondents.

VI. The Rules and Policies Which the College Seeks to Enforce Are Reasonable

The action which is challenged by petitioners was based upon the "Statement On Rights, Freedoms and Responsibilities of Students" which is reproduced in the appendix to the Court of Appeals decision (445 F.2d 1122 at p. 1132). In pertinent part, the statement provides as follows:

"If the individual rights of a student are to be preserved, certain standards must be maintained in student affairs.

"A. Care shall be taken in the establishment and organization of campus groups so that the basic rights, freedoms and responsibilities of students will be preserved.

"B. Student organizations shall submit a clear statement of purpose. . . .

". . .

"E. College students and student organizations shall have the right to examine and discuss all questions of interest to them, to express opinions publicly and privately, and to support causes by orderly means. They may organize public demonstrations and protest gatherings and utilize the right of petition. Students do not have the right to deprive others of the opportunity to speak or be heard, to invade the privacy of others, to damage the property of others, to disrupt the regular and essential operation of the college, or to interfere with the rights of others." (At p. 1135.)

The petitioners do not appear to challenge the reasonableness of the rules contained in the above statement. They apparently contend that the action taken by the president of the college was not necessary to the effectuation of the stated rules and policies. It is submitted that the means chosen by the president to enforce such rules and policies was well within the limits of his lawful discretion.

Events of the past few years on college campuses across the country have demonstrated that there exists a small minority of students who not only advocate but actively practice disruptive and violent tactics designed to interfere with the rights of others and with the free interchange of ideas. In a resolution adopted by the American Association of University Professors at its Council Meeting of October 29, 1967, it is stated:

> "Action by individuals or groups to prevent speakers invited to the campus from speaking, to disrupt the operation of the institution in the course of demonstrations, or to obstruct and restrain other members of the academic community and the campus visitors by physical force is destructive of the pursuit of learning and of a free society. *All components of the academic community are under a strong obligation to protect its processes from these tactics.*"*

As stated by the late Mr. Justice Black in his dissent in the *Tinker* case:

> "Many . . . student groups . . . have already engaged in rioting, property seizures, and destruction. They have picketed schools to force students not to cross their picket lines and have too often violently attacked earnest but frightened students who wanted an education that the pickets did not want them to get. Students engaged in such activities are apparently confident that they know far more about how to operate the public school system than do their parents, teachers, and the elected school officials. It is no answer to say that the particular students here have not yet reached such high points in their demands . . . to exercise their political pressures. . . . It is nothing but wishful thinking to imagine that young, immature students will not soon believe it is their right to control the schools. . . ." (393 U.S. at p. 525.)

Under the rule of the *Tinker* decision, a school may constitutionally prohibit an activity if there are circumstances present from which the school officials reasonably could forecast substantial disruption or interference with school activities. 393 U.S. at p. 513.

Sellers v. Regents of the Univ. of Calif., supra, decided less than two years after this Court's decision in *Tinker,* holds that a university may withhold permission to use its

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*Quoted in Wilson, *Campus Freedom and Order,* 45 Denver L.J. 502, 504 (1968). (Emphasis added).

facilities upon the basis of a reasonable belief that the activity to be conducted would be in violation of law.

If there is reason to believe that the tenets and purposes of an organization sanction the use of violent tactics and other unlawful forms of protest, it obviously is reasonable to infer that the organization may use college facilities to violate the law and to disrupt the educational process, or to plan and organize such unlawful activities. Where the organization applying for recognition is a "local chapter" of a national organization which has openly employed unlawful means to achieve its ends, a college official is clearly justified in exercising extraordinary caution before granting official recognition to the organization.

Petitioners have argued that the facts do not establish a "clear and present danger" of violence or disruption, and therefore there is no lawful justification for the college's action. The "clear and present danger" doctrine is not applicable here. *See Cox v. Louisiana, supra,* 379 U.S. 559, 565-66 (1964). The test to be applied is whether there is an overriding public interest which is served by the rule sought to be enforced, not whether there is a clear and present danger to the public safety. It is sufficient that the public officials involved can reasonably find a likelihood that the prohibited activity will be detrimental to an important public interest such as the administration of justice (*Adderley v. Florida,* 385 U.S. 39 (1966); *Estes v. Texas,* 381 U.S. 532 (1965) or the preservation of the educational atmosphere (*Schwartz v. Schuker,* 298 F. Supp. 238 (E.D.N.Y. 1969)), or that public property will be used to violate a valid law (*Sellers v. Regents of the University of California,* 432 F.2d 493 (9th Cir. 1970) *cert. denied* 401 U.S. 981 (1971)).

If it is found that there is a reasonable likelihood that college facilities will be used for purposes of organizing and planning illegal activities, it is immaterial that such

conduct may be "intertwined with expression and association." (*Cox v. Louisiana, supra* at p. 563.)

VII. It Is Not Unreasonable to Require That a Student Organization Seeking Recognition Fully Disclose Its Purposes and Plans

Petitioners appear to argue that the college acted in an unconstitutional manner when it placed the burden upon them to demonstrate that official recognition of their organization would be consistent with the legitimate interests and policies of the college. It is submitted that the court below was correct in its ruling that the petitioners had the burden of demonstrating compliance with the standards established by the college (*Healy v. James*, 455 F.2d 1122, 1131 (2d Cir. 1971)). It would be unreasonable to place the burden of showing non-compliance upon the college administration.

College officials today face overwhelming responsibilities in resolving the day-to-day problems and the frequent crises which inevitably arise on college campuses. The college president not only is responsible for the continuing operation of the institution, he must also foster and maintain good relationships with the faculty, the students, the governing board, and the outside community. If he fails to retain the confidence of any one of these groups, his effectiveness is seriously impaired, and the continued functioning of the educational process may be jeopardized. It is apparent, therefore, that no college administrator should have thrust upon him any additional burdens or responsibilities in the absence of a clear showing of necessity.

In order to exercise his legitimate authority to supervise and control the educational process, the college administrator must have the relevant facts regarding the purposes, plans, goals, and motives of a student organization which seeks to receive official recognition. It is not unreasonable

to require that the students who seek the benefit of such recognition provide a statement of such relevant facts to the best of their ability.

In *Konigsberg v. State Bar of California*, 366 U.S. 36 (1961) it was held that a state constitutionally may deny admission to the bar to an applicant who refuses to answer questions having a substantial relevance to his qualifications. The petitioner in *Konigsberg*, before a hearing board of the State Bar, had stated unequivocally his disbelief in violent overthrow of the government and had stated that he had never knowingly been a member of any organization which advocated such action. He refused, however, to answer any questions relating to his alleged membership in the Communist Party. The board declined to certify him for admission on the ground that his refusal to answer had obstructed a full investigation into his qualifications and good moral character. The California Supreme Court declined to review the decision of the board. 52 Cal. 2d 769. This court affirmed, saying at 366 U.S. 46:

> "It is no answer to say that petitioner has made out a prima facie case of qualifications, for this is precisely the posture of a proceeding in which the Committee's right to examine and cross-examine become significant. . . . Petitioner could no more insist that his prima facie case makes improper further questioning of him than he could insist that such circumstance made improper the introduction of other forms of rebutting evidence."

Petitioners have suggested that recognition of their organization should be automatically granted, and then, if misuse of college facilities occurs, the college could take formal action of a disciplinary nature. It is submitted this would place an undue burden upon the college, because the college would have the burden of proving that violations had occurred. As discussed above, there are compelling

reasons to avoid placing such a burden on the college administration. On the other hand, no persuasive reasons appear in support of petitioner's contention that they should not be required to answer reasonable inquiries into the purposes and objectives of their organization in sufficient detail to enable the college to make a determination whether the organization will contribute to or materially detract from the educational process. *See also Law Students Research Council v. Wadmond*, 401 U.S. 154 (1971).

The cases cited by petitioners at page 20 of their Brief in support of their argument for placing the burden of justification upon the college president are not applicable. As discussed previously, criminal statutes applicable to society at large do not provide a valid analogy to campus rules. *Sellers v. Regents of the University of California*, 432 F.2d 493, 499 (9th Cir. 1970) *cert. denied* 401 U.S. 981 (1971).

CONCLUSION

For the reasons set out above, the decision below should be affirmed.

Dated:

Respectfully submitted,

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SUPREME COURT, U. S.

In the Supreme Court of the United States

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No. 71-452

CATHERINE J. HEALY, *et al.*,
Petitioners,
vs.
F. DON JAMES, *et al.*,
Respondents.

Motion of the Associated Students of San Francisco State College and California State College Student Presidents' Association for Leave to File Brief as Amicus Curiae and Brief Amicus Curiae

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SUBJECT INDEX

	Pages
Motion for leave to file amicus curiae brief	1
Amicus Curiae Brief	4
I. Interest of Amicus Curiae	4
II. Preliminary Statement of the case	5
III. Summary of Argument	7
IV. Argument	8
A. Petitioners as students were denied important Constitutional rights to which they were clearly entitled	8
B. Particular First Amendment protection is afforded to the expression of "political" ideas	10
C. Petitioners were subjected to a classic case of an unjustified prior restraint of their First Amendment rights	11
D. No procedural due process was afforded Petitioners to justify the prior restraint imposed upon the exercise of their First Amendment rights	13
E. The decision in this case will have far-reaching implications upon students' Constitutional rights	15
V. Conclusion	16

TABLE OF AUTHORITIES CITED

Cases

	Pages
Bantam Books v. Sullivan, 372 U.S. 58 (1963)	8
Brandenburg v. Ohio, 395 U.S. 444 (1969)	14
Eisner v. Stamford Board of Education, 440 F.2d 803 (2d Cir. 1971)	10
Estaban v. Central Missouri State College, 415 F.2d 1077 (8th Cir. 1969)	16
Flast v. Cohen, 392 U.S. 83 (1961)	2
Healy v. James, 445 F.2d 1122 (2d Cir. 1971)	2,3,4,9,10,13,14
Keyishian v. Board of Regents of the University of the State of New York, 385 U.S. 589 (1967)	8
Knight v. State Board of Education, 200 F.Supp. 174 (M.D. Tenn. 1961)	15
Lemmon v. Kurtzman, 403 U.S. 602 (1971)	10
Los Angeles Teachers Union, Local 1021, A.F.T. v. Los Angeles City Board of Education, 71 C.2d 551 (1969)	15
Marsh v. Alabama, 326 U.S. 501 (1945)	8
Near v. Minnesota, 283 U.S. 697 (1931)	8
New York Times v. Sullivan, 376 U.S. 254 (1964)	10
Noto v. United States, 367 U.S. 290 (1961)	11
Scales v. United States, 367 U.S. 203 (1961)	11
Scenic Hudson Preservation Conference v. FPC, 354 F.2d 608 (2d Cir. 1965)	2
Schenck v. United States, 249 U.S. 47 (1919)	7
Soglin v. Kauffman, 285 F. Supp. 978 (W.D. Wisc. 1968)	4
Sweezy v. New Hampshire, 354 U.S. 234 (1957)	5, 8, 9
Tilton v. Richardson, 403 U.S. 672 (1971)	5, 10
Tinker v. Des Moines Indep. Comm. School Dist., 393 U.S. 503 (1969)	7, 9, 12

STATUTES

Calif. Ed. Code § 22600 2

Calif. Ed. Code § 22600 2

Calif. Ed. Code § 23801 1

Calif. Ed. Code § 24054 1

Calif. Ed. Code § 24054.5 1

TEXTS

Comment, *The Supreme Court, 1968 Term*, 83 HARV. L. Rev. 7, 160-161 (1969) 9

Kalven, *The New York Times Case: A Note on "The Central Meaning of the First Amendment"*, 1964 SUP. CT. REV., 191 10

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-452

CATHERINE J. HEALY, *et al.*,
Petitioners,

vs.

F. DON JAMES, *et al.*,
Respondents.

Motion of the Associated Students of San Francisco State College and California State College Student Presidents' Association for Leave to File Brief as Amicus Curiae

The Associated Students of San Francisco State College (AS), a California non-profit corporation formed in 1944, is the student body organization for the San Francisco State College at San Francisco, California. It is an "auxiliary organization" organized and authorized under California law[1] to represent all of the approximately 20,000 students enrolled at the College.

The California State College Student Presidents' Association (CSCSPA) is an unincorporated, non-profit association, comprised of the student body presidents elected

1. See Calif. Ed. Code §§ 23801, 24054, and 24054.5.

by the student body associations of each of the nineteen California State Colleges.

The California State Colleges are administered by the Trustees of the California State College. (Trustees).[2] On March 1, 1972, the Trustees filed an amicus brief in this case, supporting the Respondents and the majority opinion of the Second Circuit below. *Healy v. James*, 445 F.2d 1122 (2d Cir. 1971).

It is submitted that the AS, representing all the Students at San Francisco State College, and the CSCSPA, representing the presiding officers of the authorized student body organizations of *all* the California State Colleges, have standing to represent the students of the California State Colleges upon the vital Constitutional issues presented in this case. See, *e.g.*, *Flast v. Cohen*, 392 U.S. 83 (1968); *Scenic Hudson Preservation Conference v. FPC*, 354 F.2d 608 (2d Cir. 1965).

For the reasons set forth in their accompanying Amicus Curiae Brief, the AS and CSCSPA seek the reversal of the Second Circuit's decision, and by such a result the reaffirmation by this Court of the important First Amendment rights and privileges of the some 263,000 students of the California State Colleges (as well as other college students throughout the nation).

The AS and CSCSPA recognize the lateness of their motion, which follows somewhat delayed recognition by them of (a) the positions recently taken herein by the Trustees, and (b) the extreme importance of the issues being presented to this Court by the instant case. However, they feel that the vital nature of these issues override time factors, and respectfully make this motion with this in mind. While the attorneys for Petitioners and Respondents have orally consented to the filing of the following Brief, because

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2. See Calif. Ed. Code § 22600.

of the imminence of the oral argument scheduled before this Court, the AS and CSCSPA submit this motion, and the Brief, for filing in the discretion of the Court.

The critical interests of the students represented by the AS and CSCSPA in the present case may be summarized as follows: if the position of the Respondents, and that of the majority of the Second Circuit who considered the appeal below, is upheld, not only will the Petitioners have been denied their Constitutional guarantees of speech and assembly, but such an affirmance, when relied upon as precedent, would significantly deter the free exchange of ideas in every institution of higher learning across the land, including, of course, the California State Colleges. In asking this Court to reverse the decision below, and to uphold the carefully-reasoned dissenting opinion of Judge Smith (445 F.2d at 1132-1135), the AS and CSCSPA wish to emphasize that they in no way condone or support certain of the well-publicized past actions of groups calling themselves "Students for a Democratic Society" on various college campuses and elsewhere, many aspects of which were themselves blatant denials of fundamental First Amendment rights. However, as the Petitioners' Brief makes absolutely clear, the past history of the "SDS" is not the issue at bar.

Dated: March 20, 1972

EDWIN C. SHIVER
FLOYD H. SHEBLEY

Of Counsel
PAUL N. HALVONIK

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-452

CATHERINE J. HEALY *et al.*,
Petitioners,

vs.

F. DON JAMES, *et al.*,
Respondents.

Brief of the Asociated Students of San Francisco State College and the California State College Student Presidents' Association, Amicus Curiae

I.

INTEREST OF AMICUS CURIAE

The nineteen California State College campuses situated throughout California are currently attended by over 260,000 students. For those students who are citizens of California and are eighteen years of age or older, the California Legislature has recently bestowed belated recognition of their status as adults[3]; a great majority of all college students are now in this category of citizenship.[4]

3. See, *e.g.*, Ch. 1748, §§ 1-78, Calif. Stats. and Code Amendments, 1971 Reg. Sess. of the California Legislature.

4. See *Soglin v. Kauffman*, 295 F. Supp 978, 988 (W.D. Wisc. 1968), cited in Judge Smith's dissenting opinion below, *Healy v. James, supra* at 1134 n. 3; as well as the Twenty-Sixth Amendment to the United States Constitution.

As both citizens and students enrolled in institutions of higher learning, those represented by the AS and CSCSPA in this Brief have a direct and important interest in the full preservation of the rights and privileges guaranteed to them by the First Amendment: equally because first, they do not lose these rights and privileges by becoming college students, and second, to insure the full and free flow of competing ideas so fundamentally important to the college-level educational process. See *Tilton v. Richardson*, 403 U.S. 672 (1971); *Sweezy v. New Hampshire*, 354 U.S. 234, 262-263 (1957). How this Court decides the present case will dramatically affect the exercise of these fundamental rights upon the campuses of the California State Colleges. If the decision below is affirmed, then, whether by misguided action or upon a false premise, or from personal bias or political belief, college administrators will have been given final legal authority to implement an inviduous form of prior restraint upon these students' First Amendment rights.

The Briefs of all parties and other amicus curiae in varying degrees concede the existence of students' First Amendment rights upon this nation's campuses. The AS and CSCSPA, representing a substantial number of college students, therefore have a substantial interest—representing as they do a constituency to be directly affected by the decision—in this case.

II.

PRELIMINARY STATEMENT OF THE CASE

Because the facts of this case are more than adequately set out elsewhere (Petitioners' Brief, pp. 2-8), to minimize redundancy the AS and CSCSPA only briefly discuss what are considered the most important facts controlling the decision to be made.

Petitioners, all students at Central Connecticut State College (CCSC), a public institution, filed an application for official college recognition of a group they stated would be a "completely independent" chapter of the "Students for a Democratic Society" (SDS). After approval of the application by an intermediate committee, the president of CCSC, Respondent James, denied them official recognition, reportedly fearing the group would adhere "to at least some of the major tenets of the national organization. . . ." (Appendix, p. 15). At the time, Petitioners had committed absolutely no actions to give substance to these fears, nor had they violated any provisions of the "Statement on Rights, Freedoms and Responsibilities of Students" (Pet. for Cert., pp. 24a-32a) previously adopted by CCSC.

Shortly after the president's decision, Petitioners and others were summarily ordered to disband by Respondent Judd, the Acting Dean of Student Affairs, when they met on college premises to discuss James' decision. That order was peacefully obeyed. This proceeding in District Court followed.

It is interesting to note, and, it is submitted, extremely important to the resolution of this case, that nowhere in the record is it stated, or even inferentially suggested, that any of the Petitioners at *any* time prior to or during these proceedings engaged in any misconduct or conduct in any way unlawful or disruptive in nature. Equally important, they had not even *threatened* to engage in such conduct, or to engage in activity which would unlawfully infringe upon campus peace and tranquility.[5]

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5. The most "damning" language contained in the entire record is found in Petitioners' "Statement of Purpose" filed with their application for college recognition:

> "Because it is felt that ideas without parallel in deeds are empty and ephemeral . . . SDS would provide *an agency* for integrating thought with action so as to bring about construc-

Indeed, in a nutshell this is *not* a case where Petitioners can be said, by analogy, to have told Respondent James "we are going to come on campus and 'falsely [shout] fire in a theatre'" (*Schenck v. United States,* 249 U.S. 47 (1919)); but rather by their mere selection of a name with certain meanings to Respondent James, they were subjected to a classic and unjustified "prior restraint" of their First Amendment rights.

III.

SUMMARY OF THE ARGUMENT

This is, in simplest terms, a classic case of an unjustified First Amendment "prior restraint" imposed upon the Petitioners. Accordingly, all the authorities cited by Respondents and the other amicus curiae which deal with the standards applied under the First Amendment in punishing or otherwise restraining those who have *already committed* acts outside the protection of the Amendment, are inapplicable.

On the record in this case, Respondents clearly did not obtain evidence of the substantial nature which was required to show that Petitioners' request for college approval, if granted, presented either clear and present danger of unlawful activity or a material and substantial interference with the requirements of appropriate discipline in the oper-

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tive changes in the university, in American life, and the world" (Appendix, p. 13).

(Does this language necessarily mean unlawful activity, or could it also mean Constitutionally protected "protest" activity (*cf. Tinker v. Des Moines Indep. Comm. School Dist.*, 393 U.S. 503 (1969))? Obviously the statement must be construed completely out of context to support a finding of a "clear and present danger" of unlawful activity.)

Respondents emphasize Petitioner Healey's responses to three questions asked of her by the CCSC Student Affairs Committee (Respondents' Brief, pp. 11-12). Her answers, however, were so equivocal that they lend credence to no-one's argument.

ation of the college. Rather, Respondents transcended Petitioners' First Amendment rights because of a mere undifferentiated fear or apprehension of disturbance, completely unrelated to anything Petitioners had done, or said they intended to do, upon the campus.

Simply by virtue of their positions as college administrators, respondents are not entitled to any exceptions in the application of First Amendment standards upon prior restraints. College students are full citizens, and they do not become disenfranchised from their Constitutional guarantees of free speech and assembly when they enroll at college. In fact, the college campus today is an important arena where the full exercise of First Amendment rights is to be fully accorded and jealously protected, commensurate with the carefully-limited restrictions enunciated by prior decisions of this Court, in order to protect the free interchange of ideas so vital to the educational process.

IV.

ARGUMENT

A. Petitioners as Students Were Denied Important Constitutional Rights to Which They Were Clearly Entitled

It is axiomatic that the First Amendment freedoms enjoy a preferred position in the heirarchy of Constitutional guarantees. *Marsh v. Alabama,* 326 U.S. 501, 509 (1945). Any prior restraints placed on the exercise of freedom of expression bear a heavy presumption of invalidity. *Bantam Books v. Sullivan,* 372 U.S. 58, 70 (1963); see *Near v. Minnesota,* 283 U.S. 697 (1931).

It is equally well-recognized that this nation's colleges and universities are citadels for the future protection and preservation of the Bill of Rights. *Keyishian v. Board of Regents of the University of the State of New York,* 385 U.S. 589, 603 (1967); *Sweezy v. New Hampshire,* 354 U.S.

234, 250 (1957). As aptly stated by Judge Smith in his dissenting opinion below:

> "If support for basic constitutional liberties is weakened on the nation's campuses, they will not long maintain their viability in society as a whole." [*Healy v. James,* 445 F.2d 1122, 1135 (2d Cir. 1971).]

In view of this vital function of the modern campus, it is not a valid argument in support of the decision below, made by several amicus curiae in support of the Respondents, that college administrators should be granted extraordinary powers to *restrict* these basic freedoms, because of current unrest upon many college campuses.

Recently, in *Tinker v. Des Moines Independent Comm. School Dist.,* 393 U.S. 503 (1969), this Court held the First Amendment's prohibition against infringements upon freedom of speech and expression limits the power of school officials to prohibit political protest. As stated by one commentator:

> "By virtue of *Tinker,* schools must tolerate nondistracting expression in class and nondisruptive expression outside of class. Presumably they must also tolerate a minimum level of distraction and disorder which normally flows from the expression of controversial ideas. *Students will be constitutionally protected when they* speak, write, read, distribute leaflets, engage in peaceful demonstrations, *form student organizations,* and conduct meetings and rallies, so long as they do not impair the substantially educational functions of the school. [Comment, *The Supreme Court, 1968 Term,* 83 HARV. L. REV. 7, 160-161 (1969), emphasis added.]

Tinker, in clearly placing students within the ambit of the protections afforded by the First Amendment, dealt with high school and junior high school students. As already underlined by Petitioners (Petitioners' Brief, pp. 12-13,)

and Judge Smith's dissent below (445 F.2d at 1133-1134, n. 3), because of their maturity and legal adulthood, college students should be granted relatively more latitude in the exercise of their freedoms of speech, expression, and assembly. See, also, *Tilton v. Richardson*, 403 U.S. 672 (1971); *Lemmon v. Kurtzman*, 403 U.S. 602 (1971); *Eisner v. Stamford Board of Education*, 440 F.2d 803 (2d Cir. 1971).

B. Particular First Amendment Protection Is Afforded to the Expression of "Political" Ideas

Petitioners' stated purposes for seeking approval of official status on the CCSC campus[6] were clearly primarily "political" in nature, as contrasted to a campus club devoted, for instance, to purely scientific matters, or other less controversial subjects.

The protection of the freedoms of speech and assembly is most vital where speech, such as "political speech", involves current public issues. This is certainly one of the lessons of *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), where this Court stated:

> "[d]ebate on public issues should be uninhibited, robust, and wide open, and . . . may well include vehement, caustic, and sometimes . . . sharp attacks on government and public officials." [*Id.* at 270].

Furthermore, "[p]olitical freedom ends when government can use its powers and its courts to silence its critics. . . ." Kalven, *The New York Times Case: A Note on "The Central Meaning of the First Amendment"*, 1964 SUP. CT. REV., 191, 205.

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6. See Appendix, p. 13: Included are the plan to "provide a *forum* of discussion and self-education for students" to "provide *an agency* for integrating thought with action so as to bring about constructive changes", and to "provide a *coordinating body* for relating the problems of leftist students or other groups."

C. Petitioners Were Subjected to a Classic Case of an Unjustified Prior Restraint of Their First Amendment Rights

In attempting to establish that Petitioners as students are not entitled to the fundamental First Amendment rights discussed above, Respondents, and the other amicus curiae, argue that when placed in the scale of Justice, the need to assure a continuum of campus peace and tranquility outweigh these Constitutional guarantees. However, these arguments, premised as they are on the conclusion that Respondent James, in refusing to grant official college recognition to Petitioners' group, had no alternative, lest campus strife and disorder would surely invade CCSC, are thereby fatally defective.

It is an elementary principle of our system of justice that criminal sanctions cannot be based solely upon "guilt by association." Likewise, Constitutional mandates cannot be similarly avoided or denied. As already pointed out by the Petitioners in their Brief (p. 10):

> Assuming for argument's sake that the record adequately establishes that some SDS groups have employed violence, *Scales v. United States,* 367 U.S. 203 (1961), and *Noto v. United States,* 367 U.S. 290 (1961), make it clear that 'guilt' cannot be imputed to petitioners."

But this is precisely what the Respondents have done in this case.

Before any of the Petitioners committed any wrongful or illegal act whatsoever upon the CCSC campus, by a classic "prior restraint" they were denied their freedoms of speech, association and assembly *solely* because of the alleged activities of *other* student groups calling themselves "Students for a Democratic Society" on other college campuses. Respondents elicited no evidence whatsoever associating or otherwise implicating Petitioners with this activity.

Moreover, this action by Respondents was taken in the face of an express written disclaimer, executed by the Petitioners some two months earlier, that they would be subject to the dictates of any national or parent organization.[7]

Respondent James acted as he did with regard to Petitioners' application not because there was any established threat of "material and substantial interference with the requirements of appropriate discipline in the operation of the school", to say nothing of any "clear and present danger" of violence or illegal disruptions of the educational processes, but rather from an "undifferentiated fear or apprehension of disturbance"; clearly, as recently established by this Court, insufficient to authorize inhibition of Constitutional rights. *Tinker v. Des Moines Comm. School Dist.*, 393 U.S. 503 (1969).

Respondents' action in the present case must not be confused with the standards of conduct applied to college administrators in dealing with student conduct, in the context of students' Constitutional rights, *when the events so regu-*

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7. In a written statement signed by several of the Petitioners for their group on May 12, 1970, *prior* to the initial hearing before Respondent Judd pursuant to Judge Claire's order, Petitioners unequivocally disclaimed any affiliation with, or control by, any other group. That statement affirmed, *inter alia*:

"In order to remove all doubt, we hereby affirm that the proposed organization shall be called Students for a Democratic Society at Central Connecticut College, and it shall have no connection whatsoever to the structure of any existing national organization, or organizations, bearing the name Students for a Democratic Society. Furthermore, the organization shall be unaffiliated with any other organization." (Appendix, pp. 101-102.)

For a discussion of the curious, unexplained, and unjustified rejection of this statement by Respondent Judd, see Petitioners' Brief, p. 22, at nn. 10 and 11.

If Respondents doubted the veracity of this disclaimer, upon proof of its falsity they undoubtedly could have instituted appropriate disciplinary proceedings. But respondents simply never gave Petitioners even the slightest chance to demonstrate they meant what they said in the statement.

lated are taking place or have already occurred. For instance, the cases cited by the Trustees (Brief, pp. 4-6) are not "prior restraint" cases at all, but deal with the due process standards applicable in disciplining student activity; the parameters of the right of college administrators to discipline or curtail activities in fact happening, or clearly threatened, cannot fairly be applied to instances such as reflected in the present case. Otherwise, college students are to be subjected to prior restraints upon their exercise of First Amendment rights based upon the conjectures and subjective fears of individual administrators. The First Amendment is simply not so shallow or selective, nor the college student so disenfranchised.

D. No Procedural Due Process Was Afforded Petitioners to Justify the Prior Restraint Imposed Upon the Exercise of Their First Amendment Rights

Respondents contend that because (in their view) the hearings conducted by Respondent Judd in response to District Judge Claire's order afforded Petitioners full procedural due process, Petitioners cannot complain of the refusal of Respondent James to grant official CCSC approval to their group as a campus organization. (Respondents' Brief, pp. 20-22).

Implicit in this argument is the assumption that First Amendment rights are subject to diminution before any activity at all if, in exchange, some form of "procedural due process" is granted. This hypothesis is somewhat more clearly enunciated in Judge Timbers' opinion below:

> " We wish to emphasize the narrow ground of our decision as stated. And we especially emphasize that we find it neither necessary nor appropriate, upon this record, to reach the substantive constitutional questions which might have been presented if plaintiffs had availed themselves of the procedural due process to

which Judge Claire ordered they were entitled and which the college administrtion accorded them. [445 F.2d at 1131-1132.]

Thus, the majority of the Second Circuit refused to consider the validity of Petitioners' First Amendment claims on the ground they somehow did not take advantage of a pre-condition to the exercise of those rights, *i.e.*, an administrative hearing by the college officials.

Assuming such a pre-condition was valid, as pointed out in detail in the Petitioners' Brief (p. 6, n. 5), it is certainly by no means clear that Respondent Judd's hearings would qualify as procedural due process of any nature.

But, it is submitted, Judge Smith in his dissenting opinion (445 F.2d at 1134-1135) draws out the true nature of the procedures to be implemented by Respondents under Judge Claire's order: to restrain Petitioners from authorized activity on campus, clearly within the ambit of First Amendment rights, by a hearing conducted *prior to granting or denying final approval* (and thus the performance of any actions themselves by the group in question, that hearing would have to adduce evidence of a "clear and present danger" of illegal activity, or at least evidence that their activity would "materially and substantially disrupt the work and discipline of the school". Students as citizens are entitled to the modern definition of the "clear and present danger" test. E.g., *Brandenburg v. Ohio*, 395 U.S. 444 (1969). Judge Smith also correctly analogizes the exercise of a prior restraint in this case to those instances where colleges attempt in advance to prohibit an on-campus speaker. (*Id.* at 1134, n. 8). The lower federal courts have uniformly overturned such instances of prior restraints. (*Id.*).

Where First Amendment rights are involved, courts cannot indulge the usual deference to the wisdom and judgment

of administrators acting in a quasi-legislative capacity. *Los Angeles Teachers Union, Local 1021, A.F.T. v. Los Angeles City Board of Education,* 71 C.2d 551, 557 (1969).

Therefore, in the context of the prohibition of the exercise of First Amendment rights as a prior restraint, the college's investigation and hearing clearly carries with it the burden *upon the college* (who sought to impose the restraint) to establish, by substantial evidence, there was a clear and present danger of conduct outside the protection of the First Amendment. *Cf. Knight v. State Board of Education,* 200 F.Supp. 174 (M.D. Tenn. 1961). As pointed out *in extensio* in Petitioners' Brief, Respondents clearly failed to meet that burden.

With the experience of modern campuses it is a form of sophistry to suggest, as Respondents and their supporting amicus curiae do, that Petitioners "as individuals" have not been denied their right, on or off campus, to speak, or their right to organize *off campus*. This argument completely sidesteps the main First Amendment issue here presented: Petitioners collectively, not as individuals, have been denied the right *to assemble* or organize a group *on campus,* where the student constituency is located. The issue is the rights of students on the college campus under the First Amendment, not such rights in the abstract.

E. The Decision in This Case Will Have Far-Reaching Implications Upon Students' Constitutional Rights

As pointedly noted by the Petitioners, "[t]his case gives the Court the opportunity to implant the First Amendment firmly on the college campus" (Brief, p. 15).

Being full citizens, the students of this nation's colleges deserve that opportunity and an affirmance of their First Amendment rights, which a reversal of the decision below would insure.

On the other hand, affirmance of the Second Circuit's majority opinion could have broad and disturbing implications in the area of student activities. Even if narrowly drawn and expressly limited to the facts of this particular case, such a decision would lend authoritative support to college administrators still imbued with the *in loco parentis* approach to the young adults who attend today's colleges, to impose multiple restrictions on student activities based solely upon subjective fears or conclusions as to what students might do.

In lending its approbation to Respondents' arguments, it is submitted, this Court would be telling college administrators they could indulge all inferences in favor of campus tranquility, leading to even more concrete examples of prior restraints, with resultant chilling effects upon the free interchange of ideas. But protection of First Amendment rights carries with it, as it always has in this country, the exposure to unpopular thoughts and ideas, and even the danger of disruption and turmoil. The correct solution is to punish those who would abuse their First Amendment rights. *Estaban v. Central Missouri State College,* 415 F.2d 1077 (8th Cir. 1969).

V.

CONCLUSION

For the reasons above, and as set forth in Petitioners' Brief and the dissenting opinion of Judge Smith, the majority decision below should be reversed, and the Respondents should be ordered to recognize Petitioners' group at the Central Connecticut State College.

Respectfully submitted,

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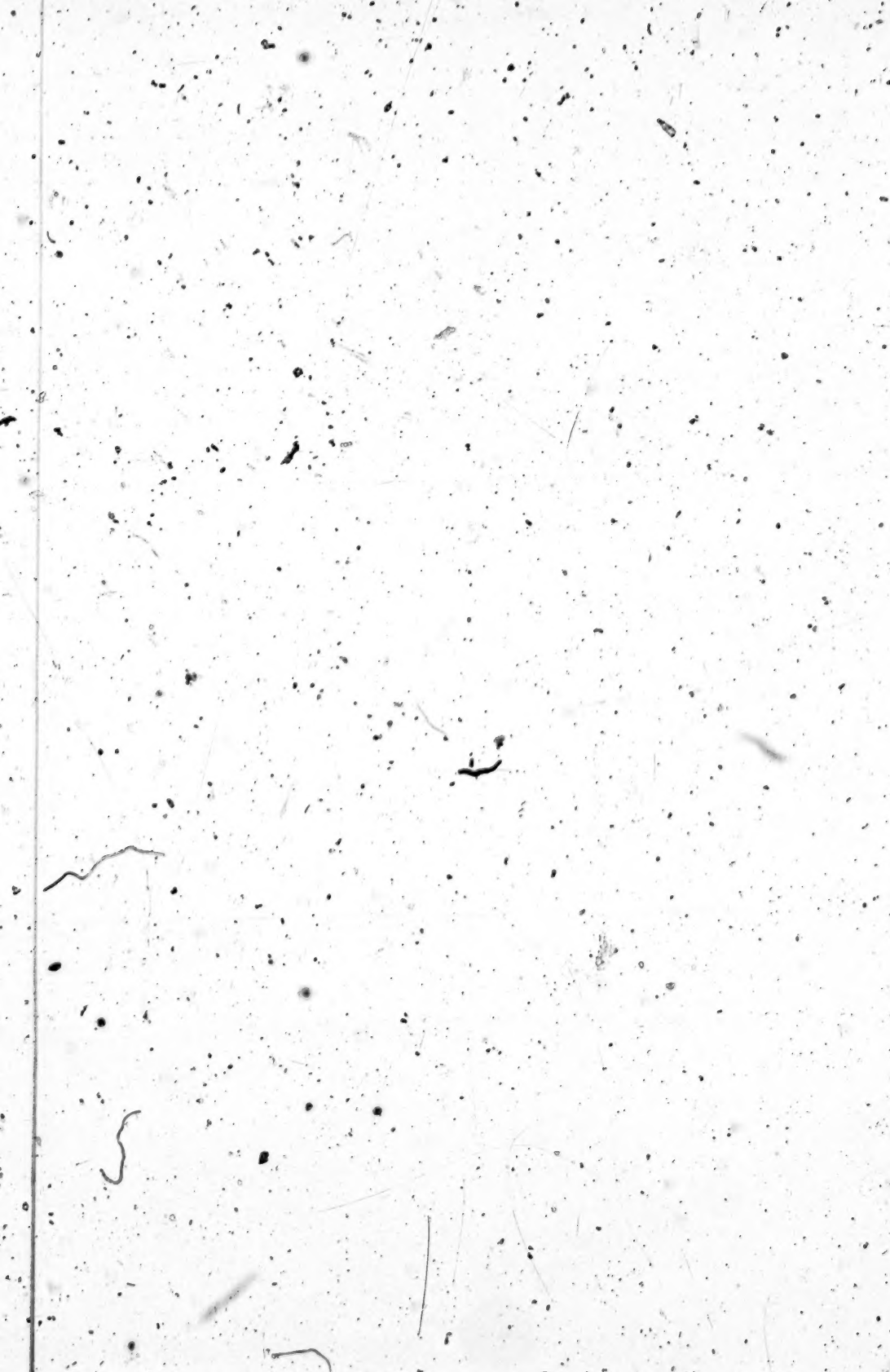

Syllabus

HEALY ET AL. *v.* JAMES ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 71–452. Argued March 28, 1972—Decided June 26, 1972

Petitioners, seeking to form a local chapter of Students for a Democratic Society (SDS) at a state-supported college, were denied recognition as a campus organization. Recognition would have entitled petitioners to use campus facilities for meetings and to use of the campus bulletin board and school newspaper. The college president denied recognition because he was not satisfied that petitioners' group was independent of the national SDS, which he concluded has a philosophy of disruption and violence in conflict with the college's declaration of student rights. Petitioners thereupon brought this action for declaratory and injunctive relief. The District Court first ordered a further administrative hearing, after which the president reaffirmed his prior decision. Approving the president's judgment, the District Court held that petitioners had failed to show that they could function free from the national SDS and that the college's refusal to approve the group, which the court found "likely to cause violent acts of disruption," did not violate petitioners' associational rights. The Court of Appeals, purporting not to reach the First Amendment issues, affirmed on the ground that petitioners had failed to avail themselves of the due process accorded to them and to meet their burden of complying with the prevailing standards for recognition. *Held:*

1. The courts erred in (1) discounting the cognizable First Amendment associational interest that petitioners had in furthering their personal beliefs and (2) assuming that the burden was on petitioners to show entitlement to recognition by the college rather than on the college to justify its nonrecognition of the group, once petitioners had made application conformably to college requirements. Pp. 180–185.

2. Insofar as the denial of recognition to petitioners' group was based on an assumed relationship with the national SDS, or was a result of disagreement with the group's philosophy, or was a consequence of a fear of disruption, for which there was no support in the record, the college's decision violated the petitioners' First Amendment rights. A proper basis for nonrecognition might have

been afforded, however, by a showing that the group refused to comply with a rule requiring them to abide by reasonable campus regulations. Since the record is not clear whether the college has such a rule and, if so, whether petitioners intend to observe it, these issues remain to be resolved. Pp. 185–194.

445 F. 2d 1122, reversed and remanded.

POWELL, J., delivered the opinion of the Court, in which BURGER, C. J., and DOUGLAS, BRENNAN, STEWART, WHITE, MARSHALL, and BLACKMUN, JJ., joined. BURGER, C. J., filed a concurring opinion, *post*, p. 195. DOUGLAS, J., filed a separate opinion, *post*, p. 196. REHNQUIST, J., filed a statement concurring in the result, *post*, p. 201.

Melvin L. Wulf argued the cause for petitioners. With him on the brief were *Eugene Z. DuBose, Jr.*, *Alvin Pudlin*, and *Sanford Jay Rosen*.

F. Michael Ahern, Assistant Attorney General of Connecticut, argued the cause for respondents. With him on the brief was *Robert K. Killian*, Attorney General.

Briefs of *amici curiae* urging affirmance were filed by *Evelle J. Younger*, Attorney General of California, and *Donald B. Day*, Deputy Attorney General, for the Board of Trustees of California State Colleges; by *Frank G. Carrington, Jr.*, and *Alan S. Ganz* for Americans for Effective Law Enforcement, Inc.; and by *Morris I. Leibman* and *Philip B. Kurland* for the American Association of Presidents of Independent Colleges and Universities.

MR. JUSTICE POWELL delivered the opinion of the Court.

This case, arising out of a denial by a state college of official recognition to a group of students who desired to form a local chapter of Students for a Democratic Society (SDS), presents this Court with questions requiring the application of well-established First Amendment principles. While the factual background of this

particular case raises these constitutional issues in a manner not heretofore passed on by the Court, and only infrequently presented to lower federal courts, our decision today is governed by existing precedent.

As the case involves delicate issues concerning the academic community, we approach our task with special caution, recognizing the mutual interest of students, faculty members, and administrators in an environment free from disruptive interference with the educational process. We also are mindful of the equally significant interest in the widest latitude for free expression and debate consonant with the maintenance of order. Where these interests appear to compete the First Amendment, made binding on the States by the Fourteenth Amendment, strikes the required balance.

I

We mention briefly at the outset the setting in 1969–1970. A climate of unrest prevailed on many college campuses in this country. There had been widespread civil disobedience on some campuses, accompanied by the seizure of buildings, vandalism, and arson. Some colleges had been shut down altogether, while at others files were looted and manuscripts destroyed. SDS chapters on some of those campuses had been a catalytic force during this period.[1] Although the causes of campus disruption were many and complex, one of the prime consequences of such activities was the denial of the lawful exercise of First Amendment rights to the majority of students by the few. Indeed, many of the most cherished characteristics long associated with institutions of higher learning appeared to be endangered. For-

[1] See Report of the President's Commission on Campus Unrest (1970); Report of the American Bar Association Commission on Campus Government and Student Dissent (1970).

tunately, with the passage of time, a calmer atmosphere and greater maturity now pervade our campuses. Yet, it was in this climate of earlier unrest that this case arose.

Petitioners are students attending Central Connecticut State College (CCSC), a state-supported institution of higher learning. In September 1969 they undertook to organize what they then referred to as a "local chapter" of SDS. Pursuant to procedures established by the College, petitioners filed a request for official recognition as a campus organization with the Student Affairs Committee, a committee composed of four students, three faculty members, and the Dean of Student Affairs. The request specified three purposes for the proposed organization's existence. It would provide "a forum of discussion and self-education for students developing an analysis of American society"; it would serve as "an agency for integrating thought with action so as to bring about constructive changes"; and it would endeavor to provide "a coordinating body for relating the problems of leftist students" with other interested groups on campus and in the community.[2] The Committee, while satisfied that the statement of purposes was clear and unobjectionable on its face, exhibited concern over the relationship between the proposed local group and the National SDS organization. In response to inquiries, representatives of the proposed organization stated that they would not affiliate with any national organization and that their group would remain "completely independent."

In response to other questions asked by Committee members concerning SDS' reputation for campus disruption, the applicants made the following statements,

[2] The statement of purposes is set out in full in the opinion dissenting from the decision of the Second Circuit. 445 F. 2d 1122, 1136–1137 (1971).

which proved significant during the later stages of these proceedings:

"Q. How would you respond to issues of violence as other S. D. S. chapters have?

"A. Our action would have to be dependent upon each issue.

"Q. Would you use any means possible?

"A. No I can't say that; would not know until we know what the issues are.

"Q. Could you envision the S. D. S. interrupting a class?

"A. Impossible for me to say."

With this information before it, the Committee requested an additional filing by the applicants, including a formal statement regarding affiliations. The amended application filed in response stated flatly that "CCSC Students for a Democratic Society are not under the dictates of any National organization." [3] At a second hearing before the Student Affairs Committee, the question of relationship with the National organization was raised again. One of the organizers explained that the National SDS was divided into several "factional groups," that the national-local relationship was a loose one, and that the local organization accepted only "certain ideas" but not all of the National organization's aims and philosophies.

By a vote of six to two the Committee ultimately approved the application and recommended to the Pres-

[3] 445 F. 2d, at 1133. During the Committee's consideration of petitioners' application, one of the group's representatives was asked why, if it indeed desired to remain independent, it chose to use a nationally known name. The witness' response was that "the name brings to mind the type of organization we wish to bring across, that is, a left-wing organization which will allow students interested in such to express themselves."

ident of the College, Dr. James, that the organization be accorded official recognition. In approving the application, the majority indicated that its decision was premised on the belief that varying viewpoints should be represented on campus and that since the Young Americans for Freedom, the Young Democrats, the Young Republicans, and the Liberal Party all enjoyed recognized status, a group should be available with which "left wing" students might identify. The majority also noted and relied on the organization's claim of independence. Finally, it admonished the organization that immediate suspension would be considered if the group's activities proved incompatible with the school's policies against interference with the privacy of other students or destruction of property. The two dissenting members based their reservation primarily on the lack of clarity regarding the organization's independence.

Several days later, the President rejected the Committee's recommendation, and issued a statement indicating that petitioners' organization was not to be accorded the benefits of official campus recognition. His accompanying remarks, which are set out in full in the margin,[4] indicate several reasons for his action. He

[4] The President stated:

"Though I have full appreciation for the action of the Student Affairs Committee and the reasons stated in their minutes for the majority vote recommending approval of a local chapter of Students for a Democratic Society, it is my judgment that the statement of purpose to form a local chapter of Students for a Democratic Society carries full and unmistakable adherence to at least some of the major tenets of the national organization, loose and divided though that organization may be. The published aims and philosophy of the Students for a Democratic Society, which include disruption and violence, are contrary to the approved policy (by faculty, students, and administration) of Central Connecticut State College which states:

" 'Students do not have the right to invade the privacy of others, to damage the property of others, to disrupt the regular and es-

found that the organization's philosophy was antithetical to the school's policies,[5] and that the group's independence was doubtful. He concluded that approval should

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sential operation of the college, or to interfere with the rights of others.'

"The further statement on the request for recognition that 'CCSC Students for a Democratic Society are not under the dictates of any National organization' in no way clarifies why if a group intends to follow the established policy of the college, they wish to become a local chapter of an organization which openly repudiates such a policy.'

"Freedom of speech, academic freedom on the campus, the freedom of establishing an open forum for the exchange of ideas, the freedoms outlined in the Statement on Rights, Freedoms, and Responsibilities of Students that 'college students and student organizations shall have the right to examine and discuss all questions of interest to them, to express opinion publicly and privately, and to support causes by orderly means. They may organize public demonstrations and protest gatherings and utilize the right of petition'—these are all precious freedoms that we cherish and are freedoms on which we stand. To approve any organization or individual who joins with an organization which openly repudiates those principles is contrary to those freedoms and to the approved 'Statement on the Rights, Freedoms, and Responsibilities of Students' at Central."

[5] In 1969, CCSC adopted, as have many other colleges and universities, a Statement of Rights, Freedoms, and Responsibilities of Students. This statement, commonly referred to as the "Student Bill of Rights," is printed as an Appendix to the Second Circuit's majority opinion in this case, 445 F. 2d, at 1135–1139. Part V of that statement establishes the standards for approval of campus organizations and imposes several basic limitations on their campus activities:

"A. Care shall be taken in the establishment and organization of campus groups so that the basic rights, freedoms and responsibilities of students will be preserved.

"B. Student organizations shall submit a clear statement of purpose, criteria for membership, rules of procedures and a list of officers as a condition of institutional recognition. They shall not be required to submit a membership list as a condition of institutional recognition.

"C. Membership in campus organizations shall be limited to

not be granted to any group that "openly repudiates" the College's dedication to academic freedom.

Denial of official recognition posed serious problems for the organization's existence and growth. Its members were deprived of the opportunity to place announcements regarding meetings, rallies, or other activities in the student newspaper; they were precluded from using various campus bulletin boards; and—most importantly—nonrecognition barred them from using campus facilities for holding meetings. This latter disability was brought home to petitioners shortly after the President's announcement. Petitioners circulated a notice calling a meeting to discuss what further action should be taken in light of the group's official rejection. The members met at the coffee shop in the Student Center ("Devils' Den") but were disbanded on the President's order since nonrecognized groups were not entitled to use such facilities.[6]

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matriculated students (day or evening) at the college. Membership shall not be restricted by race, religion or nationality. The members shall have sole power to determine organization policy consistent with the regulations of the college.

"D. Each organization is free to choose its own adviser. Advisers to organizations shall advise but not control the organizations and their policies.

"E. College students and student organizations shall have the right to examine and discuss all questions of interest to them, to express opinion publicly and privately, and to support causes by orderly means. They may organize public demonstrations and protest gatherings and utilize the right of petition. Students do not have the right to deprive others of the opportunity to speak or be heard, to invade the privacy of others, to damage the property of others, to disrupt the regular and essential operation of the college, or to interfere with the rights of others."

[6] During the meeting petitioners were approached by two of the College's deans, who served petitioners with a memorandum from the President stating:

"Notice has been received by this office of a meeting of the

Their efforts to gain recognition having proved ultimately unsuccessful, and having been made to feel the burden of nonrecognition, petitioners resorted to the courts. They filed a suit in the United States District Court for the District of Connecticut, seeking declaratory and injunctive relief against the President of the College, other administrators, and the State Board of Trustees. Petitioners' primary complaint centered on the denial of First Amendment rights of expression and association arising from denial of campus recognition. The cause was submitted initially on stipulated facts, and, after a short hearing, the judge ruled that petitioners had been denied procedural due process because the President had based his decision on conclusions regarding the applicant's affiliation which were outside the record before him. The court concluded that if the President wished to act on the basis of material outside the application he must at least provide petitioners a hearing and opportunity to introduce evidence as to their affiliations. 311 F. Supp. 1275, 1279, 1281. While retaining jurisdiction over the case, the District Court ordered respondents to hold a hearing in order to clarify the several ambiguities surrounding the President's decision. One of the matters to be explored was whether the local organization, true to its repeated affirmations, was in fact independent of the National SDS. *Id.*, at 1282. And if the hearing demonstrated that the two were not separable, the respondents were instructed that they might then review the "aims and philosophy" of the National organization. *Ibid.*

'C. C. S. C.-S. D. S. on Thursday—November 6 at 7:00 p. m. at the Devils' Den.'

"Such meeting may not take place in the Devils' Den of the Student Center nor in or on any other property of the college since the C. C. S. C.-S. D. S. is not a duly recognized college organization.

"You are hereby notified by this action to cease and desist from meeting on college property."

Pursuant to the court's order, the President designated Dean Judd, the Dean of Student Affairs, to serve as hearing officer and a hearing was scheduled. The hearing, which spanned two dates and lasted approximately two hours, added little in terms of objective substantive evidence to the record in this case. Petitioners introduced a statement offering to change the organization's name from "CCSC local chapter of SDS" to "Students for a Democratic Society of Central Connecticut State College." They further reaffirmed that they would "have no connection whatsoever to the structure of an existing national organization." Petitioners also introduced the testimony of their faculty adviser to the effect that some local SDS organizations elsewhere were unaffiliated with any national organization. The hearing officer, in addition to introducing the minutes from the two pertinent Student Affairs Committee meetings, also introduced, *sua sponte*, portions of a transcript of hearings before the United States House of Representatives Internal Security Committee investigating the activities of SDS. Excerpts were offered both to prove that violent and disruptive activities had been attributed to SDS elsewhere and to demonstrate that there existed a national organization that recognized and cooperated with regional and local college campus affiliates. Petitioners did not challenge the asserted existence of a National SDS, nor did they question that it did have a system of affiliations of some

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[1] 319 F. Supp. 113, 114 (1970). The hearing officer, over petitioners' objection, ruled that the statement was inadmissible, apparently on the ground that it would constitute an amendment to the original application and would be beyond the permissible scope of the hearing. Whatever the merits of this ruling, the statement was in the record reviewed by the President and was relied on in the subsequent District Court opinion without reference to its prior exclusion. *Ibid.*

sort. Their contention was simply that their organization would not associate with that network. Throughout the hearing the parties were acting at cross purposes. What seemed relevant to one appeared completely immaterial to the other. This failure of the hearing to advance the litigation was, at bottom, the consequence of a more basic failure to join issue on the considerations that should control the President's ultimate decision, a problem to which we will return in the ensuing section.

Upon reviewing the hearing transcript and exhibits, the President reaffirmed his prior decision to deny petitioners recognition as a campus organization. The reasons stated, closely paralleling his initial reasons, were that the group would be a "disruptive influence" at CCSC and that recognition would be "contrary to the orderly process of change" on the campus.

After the President's second statement issued, the case then returned to the District Court, where it was ordered dismissed. The court concluded, first, that the formal requisites of procedural due process had been complied with, second, that petitioners had failed to meet their burden of showing that they could function free from the National organization, and, third, that the College's refusal to place its stamp of approval on an organization whose conduct it found "likely to cause violent acts of disruption" did not violate petitioners' associational rights. 319 F. Supp. 113, 116.

Petitioners appealed to the Court of Appeals for the Second Circuit where, by a two-to-one vote, the District Court's judgment was affirmed. The majority purported not to reach the substantive First Amendment issues on the theory that petitioners had failed to avail themselves of the due process accorded them and had failed to meet their burden of complying with the prevailing standards for recognition. 445 F. 2d 1122, 1131–1132. Judge

Smith dissented, disagreeing with the majority's refusal to address the merits and finding that petitioners had been deprived of basic First Amendment rights. *Id.*, at 1136. This Court granted certiorari and, for the reasons that follow, we conclude that the judgments of the courts below must be reversed and the case remanded for reconsideration.

II

At the outset we note that state colleges and universities are not enclaves immune from the sweep of the First Amendment. "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker* v. *Des Moines Independent School District*, 393 U. S. 503, 506 (1969). Of course, as Mr. Justice Fortas made clear in *Tinker*, First Amendment rights must always be applied "in light of the special characteristics of the . . . environment" in the particular case. *Ibid.* And, where state-operated educational institutions are involved, this Court has long recognized "the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools." *Id.*, at 507. Yet, the precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, "[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." *Shelton* v. *Tucker*, 364 U. S. 479, 487 (1960). The college classroom with its surrounding environs is peculiarly the "'marketplace of ideas,'" and we break no new constitutional ground in reaffirming this Nation's dedication to safeguarding aca-

demic freedom. *Keyishian* v. *Board of Regents,* 385 U. S. 589, 603 (1967); *Sweezy* v. *New Hampshire,* 354 U. S. 234, 249–250 (1957) (plurality opinion of Mr. Chief Justice Warren), 262 (Frankfurter, J., concurring in result).

Among the rights protected by the First Amendment is the right of individuals to associate to further their personal beliefs. While the freedom of association is not explicitly set out in the Amendment, it has long been held to be implicit in the freedoms of speech, assembly, and petition. See, *e. g., Baird* v. *State Bar of Arizona,* 401 U. S. 1, 6 (1971); *NAACP* v. *Button,* 371 U. S. 415, 430 (1963); *Louisiana ex rel. Gremillion* v. *NAACP,* 366 U. S. 293, 296 (1961); *NAACP* v. *Alabama ex rel. Patterson,* 357 U. S. 449 (1958) (Harlan, J., for a unanimous Court). There can be no doubt that denial of official recognition, without justification, to college organizations burdens or abridges that associational right. The primary impediment to free association flowing from nonrecognition is the denial of use of campus facilities for meetings and other appropriate purposes. The practical effect of nonrecognition was demonstrated in this case when, several days after the President's decision was announced, petitioners were not allowed to hold a meeting in the campus coffee shop because they were not an approved group.

Petitioners' associational interests also were circumscribed by the denial of the use of campus bulletin boards and the school newspaper. If an organization is to remain a viable entity in a campus community in which new students enter on a regular basis, it must possess the means of communicating with these students. Moreover, the organization's ability to participate in the intellectual give and take of campus debate, and to pursue its stated purposes, is limited by denial of access to the customary media for communicating with the admin-

istration, faculty members, and other students.[8] Such impediments cannot be viewed as insubstantial.

Respondents and the courts below appear to have taken the view that denial of official recognition in this case abridged no constitutional rights. The District Court concluded that

> "President James' discretionary action in denying this application cannot be legitimately magnified and distorted into a constitutionally cognizable interference with the personal ideas or beliefs of any segment of the college students; neither does his action deter in any material way the individual advocacy of their personal beliefs; nor can his action be reasonably construed to be an invasion of, or having a chilling effect on academic freedom." 319 F. Supp., at 116.

In that court's view all that was denied petitioners was the "administrative seal of official college respectability."[9] *Ibid.* A majority of the Court of Appeals agreed that petitioners had been denied only the "college's stamp of approval." 445 F. 2d, at 1131. Respondents take that same position here, arguing that petitioners still may meet as a group off campus, that

[8] It is unclear on this record whether recognition also carries with it a right to seek funds from the school budget. Petitioners' counsel at oral argument indicated that official recognition entitled the group to "make application for use of student funds." Tr. of Oral Arg. 4. The first District Court opinion, however, states flatly that "[r]ecognition does not thereby entitle an organization to college financial support." 311 F. Supp. 1275, 1277. Since it appears that, at the least, recognition only entitles a group to *apply* for funds, and since the record is silent as to the criteria used in allocating such funds, we do not consider possible funding as an associational aspect of nonrecognition in this case.

[9] These statements are in contrast to the first opinion by the District Court, which reflected a full appreciation of the constitutional significance of petitioners' claim. 311 F. Supp., at 1280–1282.

they still may distribute written material off campus, and that they still may meet together informally on campus—as individuals, but not as CCSC-SDS.

We do not agree with the characterization by the courts below of the consequences of nonrecognition. We may concede, as did Mr. Justice Harlan in his unanimous opinion for the Court in *NAACP* v. *Alabama ex rel. Patterson*, 357 U. S., at 461, that the administration "has taken no direct action . . . to restrict the rights of petitioner's members to associate freely." But the Constitution's protection is not limited to direct interference with fundamental rights. The requirement in *Patterson* that the NAACP disclose its membership lists was found to be an impermissible, though indirect, infringement of the members' associational rights. Likewise, in this case, the group's possible ability to exist outside the campus community does not ameliorate significantly the disabilities imposed by the President's action. We are not free to disregard the practical realities. MR. JUSTICE STEWART has made the salient point: "Freedoms such as these are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference." *Bates* v. *City of Little Rock*, 361 U. S. 516, 523 (1960). See also *Sweezy* v. *New Hampshire*, 354 U. S., at 263 (Frankfurter, J., concurring in result); *Watkins* v. *United States*, 354 U. S. 178, 197 (1957).

The opinions below also assumed that petitioners had the burden of showing entitlement to recognition by the College.[10] While petitioners have not challenged the procedural requirement that they file an application in conformity with the rules of the College,[11] they do

[10] 445 F. 2d, at 1131; 319 F. Supp., at 116.

[11] The standards for official recognition require applicants to provide a clear statement of purposes, criteria for membership, rules of procedure, and a list of officers. Applicants must limit member-

question the view of the courts below that final rejection could rest on their failure to convince the administration that their organization was unaffiliated with the National SDS. For reasons to be stated later in this opinion, we do not consider the issue of affiliation to be a controlling one. But, apart from any particular issue, once petitioners had filed an application in conformity with the requirements, the burden was upon the College administration to justify its decision of rejection. See, *e. g., Law Students Civil Rights Research Council* v. *Wadmond*, 401 U. S. 154, 162–163 (1971); *United States* v. *O'Brien*, 391 U. S. 367, 376–377 (1968); *Speiser* v. *Randall*, 357 U. S. 513 (1958). It is to be remembered that the effect of the College's denial of recognition was a form of prior restraint, denying to petitioners' organization the range of associational activities described above. While a college has a legitimate interest in preventing disruption on the campus, which under circumstances requiring the safeguarding of that interest may justify such restraint, a "heavy burden" rests on the college to demonstrate the appropriateness of that action. See *Near* v. *Minnesota*, 283 U. S. 697, 713–716 (1931); *Organization for a Better Austin* v. *Keefe*, 402 U. S. 415, 418 (1971); *Freedman* v. *Maryland*, 380 U. S. 51, 57 (1965).

III

These fundamental errors—discounting the existence of a cognizable First Amendment interest and misplac-

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ship to "matriculated students" and may not discriminate on the basis of race, religion or nationality. The standards further state that groups may "examine and discuss all questions of interest," and they may conduct demonstrations and utilize their right of petition, but they are prohibited from interfering with the rights of other students. See n. 5, *supra*. Petitioners have not challenged these standards and their validity is not here in question.

ing the burden of proof—require that the judgments below be reversed. But we are unable to conclude that no basis exists upon which nonrecognition might be appropriate. Indeed, based on a reasonable reading of the ambiguous facts of this case, there appears to be at least one potentially acceptable ground for a denial of recognition. Because of this ambiguous state of the record we conclude that the case should be remanded, and, in an effort to provide guidance to the lower courts upon reconsideration, it is appropriate to discuss the several bases of President James' decision. Four possible justifications for nonrecognition, all closely related, might be derived from the record and his statements. Three of those grounds are inadequate to substantiate his decision: a fourth, however, has merit.

A

From the outset the controversy in this case has centered in large measure around the relationship, if any, between petitioners' group and the National SDS. The Student Affairs Committee meetings, as reflected in its minutes, focused considerable attention on this issue; the court-ordered hearing also was directed primarily to this question. Despite assurances from petitioners and their counsel that the local group was in fact independent of the National organization, it is evident that President James was significantly influenced by his apprehension that there was a connection. Aware of the fact that some SDS chapters had been associated with disruptive and violent campus activity, he apparently considered that affiliation itself was sufficient justification for denying recognition.[12]

Although this precise issue has not come before the Court heretofore, the Court has consistently disapproved

[12] See n. 4, *supra*, for the complete text of the President's statement.

governmental action imposing criminal sanctions or denying rights and privileges solely because of a citizen's association with an unpopular organization. See, *e. g.*, *United States* v. *Robel*, 389 U. S. 258 (1967); *Keyishian* v. *Board of Regents*, 385 U. S., at 605–610; *Elfbrandt* v. *Russell*, 384 U. S. 11 (1966); *Scales* v. *United States*, 367 U. S. 203 (1961). In these cases it has been established that "guilt by association alone, without [establishing] that an individual's association poses the threat feared by the Government," is an impermissible basis upon which to deny First Amendment rights. *United States* v. *Robel*, *supra*, at 265. The government has the burden of establishing a knowing affiliation with an organization possessing unlawful aims and goals, and a specific intent to further those illegal aims.[13]

Students for a Democratic Society, as conceded by the College and the lower courts, is loosely organized, having various factions and promoting a number of diverse social and political views, only some of which call for unlawful action.[14] Not only did petitioners proclaim their complete independence from this organization,[15] but they also

[13] In addition to the cases cited in the text above, see also *Law Students Civil Rights Research Council* v. *Wadmond*, 401 U. S. 154, 164–166 (1971); *In re Stolar*, 401 U. S. 23, 28 (1971); *Aptheker* v. *Secretary of State*, 378 U. S. 500 (1964); *Noto* v. *United States*, 367 U. S. 290, 299–300 (1961).

[14] See Hearings before a Subcommittee of the House Committee on Appropriations, 92d Cong., 2d Sess., pt. 1, p. 916 (1972), in which the former Director of the Federal Bureau of Investigation, J. Edgar Hoover, states that while violent factions have spun off from SDS, its present leadership is "critical of bombing and violence."

[15] Petitioners asserted their independence both orally and in a written submission before the Student Affairs Committee. They restated their nonaffiliation in a formal statement filed prior to the court-ordered hearing. The only indication to the contrary is their unwillingness to eschew use of the SDS name altogether. But see n. 3, *supra*.

indicated that they shared only some of the beliefs its leaders have expressed.[16] On this record it is clear that the relationship was not an adequate ground for the denial of recognition.

B

Having concluded that petitioners were affiliated with, or at least retained an affinity for, National SDS, President James attributed what he believed to be the philosophy of that organization to the local group. He characterized the petitioning group as adhering to "some of the major tenets of the national organization," including a philosophy of violence and disruption.[17] Understandably, he found that philosophy abhorrent. In an article signed by President James in an alumni periodical, and made a part of the record below, he announced his unwillingness to "sanction an organization that openly advocates the destruction of the very ideals and freedoms upon which the academic life is founded." He further emphasized that the petitioners' "philosophies" were "counter to the official policy of the college."

The mere disagreement of the President with the group's philosophy affords no reason to deny it recognition. As repugnant as these views may have been, especially to one with President James' responsibility, the mere expression of them would not justify the denial of First Amendment rights. Whether petitioners did in fact advocate a philosophy of "destruction" thus becomes immaterial. The College, acting here as the instrumentality of the State, may not restrict speech or association simply because it finds the views expressed

[16] Representatives of the group stated during the Student Affairs Committee meetings that they did not identify with all of the National's statements, but wished simply to "pick . . . certain ideas" from that organization.

[17] See n. 4, *supra*.

by any group to be abhorrent. As Mr. Justice Black put it most simply and clearly:

> "I do not believe that it can be too often repeated that the freedoms of speech, press, petition and assembly guaranteed by the First Amendment must be accorded to the ideas we hate or sooner or later they will be denied to the ideas we cherish." *Communist Party* v. *SACB*, 367 U. S. 1, 137 (dissenting opinion) (1961).

C

As the litigation progressed in the District Court, a third rationale for President James' decision—beyond the questions of affiliation and philosophy—began to emerge. His second statement, issued after the court-ordered hearing, indicates that he based rejection on a conclusion that this particular group would be a "disruptive influence at CCSC." This language was underscored in the second District Court opinion. In fact, the Court concluded that the President had determined that CCSC-SDS' "prospective campus activities were likely to cause a disruptive influence at CCSC." 319 F. Supp., at 116.

If this reason, directed at the organization's activities rather than its philosophy, were factually supported by the record, this Court's prior decisions would provide a basis for considering the propriety of nonrecognition. The critical line heretofore drawn for determining the permissibility of regulation is the line between mere advocacy and advocacy "directed to inciting or producing imminent lawless action and . . . likely to incite or produce such action." *Brandenburg* v. *Ohio*, 395 U. S. 444, 447 (1969) (unanimous *per curiam* opinion). See also *Scales* v. *United States*, 367 U. S., at 230–232; *Noto* v. *United States*, 367 U. S. 290, 298 (1961);

Yates v. *United States*, 354 U. S. 298 (1957). In the context of the "special characteristics of the school environment," [18] the power of the government to prohibit "lawless action" is not limited to acts of a criminal nature. Also prohibitable are actions which "materially and substantially disrupt the work and discipline of the school." *Tinker* v. *Des Moines Independent School District*, 393 U. S., at 513. Associational activities need not be tolerated where they infringe reasonable campus rules, interrupt classes, or substantially interfere with the opportunity of other students to obtain an education.

The "Student Bill of Rights" at CCSC, upon which great emphasis was placed by the President, draws precisely this distinction between advocacy and action. It purports to impose no limitations on the right of college student organizations "to examine and discuss *all* questions of interest to them." (Emphasis supplied.) But it also states that students have no right (1) "to deprive others of the opportunity to speak or be heard," (2) "to invade the privacy of others," (3) "to damage the property of others," (4) "to disrupt the regular and essential operation of the college," or (5) "to interfere with the rights of others." [19] The line between permissible speech and impermissible conduct tracks the constitutional requirement, and if there were an evidential basis to support the conclusion that CCSC-SDS posed a substantial threat of material disruption in violation of that command the President's decision should be affirmed.[20]

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[18] *Tinker* v. *Des Moines Independent School District*, 393 U. S. 503, 506 (1969).

[19] See n. 5, *supra*.

[20] It may not be sufficient merely to show the existence of a legitimate and substantial state interest. Where state action designed to regulate prohibitable action also restricts associational rights—as nonrecognition does—the State must demonstrate that the action

The record, however, offers no substantial basis for that conclusion. The only support for the view expressed by the President, other than the reputed affiliation with National SDS, is to be found in the ambivalent responses offered by the group's representatives at the Student Affairs Committee hearing, during which they stated that they did not know whether they might respond to "issues of violence" in the same manner that other SDS chapters had on other campuses. Nor would they state unequivocally that they could never "envision . . . interrupting a class." Whatever force these statements might be thought to have is largely dissipated by the following exchange between petitioners' counsel and the Dean of Student Affairs during the court-ordered hearing:

> Counsel: ". . . I just read the document that you're offering [minutes from Student Affairs Committee meeting] and I can't see that there's anything in it that intimates that these students contemplate any illegal or disruptive practice."
>
> Dean: "No. There's no question raised to that, counselor . . . ." App. 73–74.

Dean Judd's remark reaffirms, in accord with the full record, that there was no substantial evidence that these particular individuals acting together would con-

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taken is reasonably related to protection of the State's interest and that "the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest." *United States* v. *O'Brien*, 391 U. S. 367, 377 (1968). See also *NAACP* v. *Alabama ex rel. Flowers*, 377 U. S. 288 (1964); *Gibson* v. *Florida Legislative Investigation Committee*, 372 U. S. 539, 546 (1963); *NAACP* v. *Alabama ex rel. Patterson*, 357 U. S. 449 (1958). On this record, absent a showing of any likelihood of disruption or unwillingness to recognize reasonable rules governing campus conduct, it is not necessary for us to decide whether denial of recognition is an appropriately related and narrow response.

stitute a disruptive force on campus. Therefore, insofar as nonrecognition flowed from such fears, it constituted little more than the sort of "undifferentiated fear or apprehension of disturbance [which] is not enough to overcome the right to freedom of expression." *Tinker* v. *Des Moines Independent School District*, 393 U. S., at 508.

D

These same references in the record to the group's equivocation regarding how it might respond to "issues of violence" and whether it could ever "envision . . . interrupting a class," suggest a fourth possible reason why recognition might have been denied to these petitioners. These remarks might well have been read as announcing petitioners' unwillingness to be bound by reasonable school rules governing conduct. The College's Statement of Rights, Freedoms, and Responsibilities of Students contains, as we have seen, an explicit statement with respect to campus disruption. The regulation, carefully differentiating between advocacy and action, is a reasonable one, and petitioners have not questioned it directly.[21] Yet their statements raise considerable question whether they intend to abide by the prohibitions contained therein.[22]

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[21] See n. 5, *supra*.

[22] The Court of Appeals found that petitioners "failed candidly to respond to inquiries whether they would resort to violence and disruption on the CCSC campus, including interruption of classes." 445 F. 2d, at 1131. While petitioners' statements may be read as intimating a rejection of reasonable regulations in advance, there is in fact substantial ambiguity on this point. The questions asked by members of the Student Affairs Committee do not appear to have been propounded with any clear distinction in mind between that which the petitioners might advocate and the conduct in which they might engage. Nor did the Student Affairs Committee attempt to obtain a clarification of the petitioners' ambiguous answers by

As we have already stated in Parts B and C, the critical line for First Amendment purposes must be drawn between advocacy, which is entitled to full protection, and action, which is not. Petitioners may, if they so choose, preach the propriety of amending or even doing away with any or all campus regulations. They may not, however, undertake to flout these rules. MR. JUSTICE BLACKMUN, at the time he was a circuit judge on the Eighth Circuit, stated:

> "We . . . hold that a college has the inherent power to promulgate rules and regulations; that it has the inherent power properly to discipline; that it has power appropriately to protect itself and its property; that it may expect that its students adhere to generally accepted standards of conduct." *Esteban* v. *Central Missouri State College*, 415 F. 2d 1077, 1089 (CA8 1969), cert. denied, 398 U. S. 965 (1970).

Just as in the community at large, reasonable regulations with respect to the time, the place, and the manner in which student groups conduct their speech-related

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asking specifically whether the group was willing to abide by the Student Bill of Rights governing all campus organizations.

Moreover, this question was not among those referred by the District Court to the administrative hearing, and it was there addressed only tangentially. The group members who had made statements before the Student Affairs Committee did not testify, and their position was not clarified. Their counsel, whose tactics were characterized as "disruptive" by the Court of Appeals, elected to make argumentative statements rather than elicit relevant testimony. *Id.*, at 1126. Indeed, the District Court's failure to identify the question of willingness to abide by the College's rules and regulations as a significant subject of inquiry, coupled with the equivocation on the part of the group's representatives, lend support to our view that a remand is necessary.

activities must be respected.[23] A college administration may impose a requirement, such as may have been imposed in this case, that a group seeking official recognition affirm in advance its willingness to adhere to reasonable campus law. Such a requirement does not impose an impermissible condition on the students' associational rights. Their freedom to speak out, to assemble, or to petition for changes in school rules is in no sense infringed. It merely constitutes an agreement to conform with reasonable standards respecting conduct. This is a minimal requirement, in the interest of the entire academic community, of any group seeking the privilege of official recognition.

Petitioners have not challenged in this litigation the procedural or substantive aspects of the College's requirements governing applications for official recognition. Although the record is unclear on this point, CCSC may have, among its requirements for recognition, a rule that prospective groups affirm that they intend to comply with reasonable campus regulations. Upon remand it should first be determined whether the College recognition procedures contemplate any such requirement. If so, it should then be ascertained whether petitioners intend to comply. Since we do not have the terms of a specific prior affirmation rule before us, we are not called on to decide whether any particular formulation would or would not prove constitutionally acceptable. Assuming the existence of a valid rule, however, we do conclude that the benefits of participation in the internal life of the college community may be denied to any

[23] See, *e. g.*, *Adderley* v. *Florida*, 385 U. S. 39, 47–48 (1966); *Cox* v. *Louisiana*, 379 U. S. 536, 558 (1965); *Louisiana ex rel. Gremillion* v. *NAACP*, 366 U. S. 293, 297 (1961).

group that reserves the right to violate any valid campus rules with which it disagrees.[24]

IV

We think the above discussion establishes the appropriate framework for consideration of petitioners' request for campus recognition. Because respondents failed to accord due recognition to First Amendment principles, the judgments below approving respondents' denial of recognition must be reversed. Since we cannot conclude from this record that petitioners were willing to abide by reasonable campus rules and regulations, we order the case remanded for reconsideration. We note, in so holding, that the wide latitude accorded by the Constitution to the freedoms of expression and association is not without its costs in terms of the risk to the maintenance of civility and an ordered society. Indeed, this latitude often has resulted, on the campus and elsewhere, in the infringement of the rights of others. Though we deplore the tendency of some to abuse the very constitutional privilges they invoke, and although the infringement of rights of others certainly should not be tolerated, we reaffirm this Court's dedication to the principles of the Bill of Rights upon which our vigorous and free society is founded.

Reversed and remanded.

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[24] In addition to the College administration's broad rulemaking power to assure that the traditional academic atmosphere is safeguarded, it may also impose sanctions on those who violate the rules. We find, for instance, that the Student Affairs Committee's admonition to petitioners in this case suggests one permissible practice—recognition, once accorded, may be withdrawn or suspended if petitioners fail to respect campus law. See, *e. g.*, *University of Southern Mississippi Chapter of Mississippi Civil Liberties Union* v. *University of Southern Mississippi*, 452 F. 2d 564 (CA5 1971); *American Civil Liberties Union* v. *Radford College*, 315 F. Supp. 893 (WD Va. 1970).

MR. CHIEF JUSTICE BURGER, concurring.

I am in agreement with what is said in the Court's opinion and I join in it. I do so because I read the basis of the remand as recognizing that student organizations seeking the privilege of official campus recognition must be willing to abide by valid rules of the institution applicable to all such organizations. This is a reasonable condition insofar as it calls for the disavowal of resort to force, disruption, and interference with the rights of others.

The District Judge was troubled by the lack of a comprehensive procedural scheme that would inform students of the steps to be taken to secure recognized standing, and by the lack of articulated criteria to be used in evaluating eligibility for recognition. It was for this reason, as I read the record, that he remanded the matter to the college for a factual inquiry and for a more orderly processing in a *de novo* hearing within the college administrative structure. It is within that structure and within the academic community that problems such as these should be resolved. The courts, state or federal, should be a last resort. Part of the educational experience of every college student should be an experience in responsible self-government and this must be a joint enterprise of students and faculty. It should not be imposed unilaterally from above, nor can the terms of the relationship be dictated by students. Here, in spite of the wisdom of the District Court in sending the case back to the college, the issue identified by the Court's opinion today was not adequately addressed in the hearing.

The relatively placid life of the college campus of the past has not prepared either administrators or students for their respective responsibilities in maintaining an atmosphere in which divergent views can be asserted

vigorously, but civilly, to the end that those who seek to be heard accord the same right to all others. The "Statement of Rights, Freedoms, and Responsibilities of Students," sometimes called the "College Bill of Rights," in effect on this campus, and not questioned by petitioners, reflected a rational adjustment of the competing interests. But it is impossible to know from the record in this case whether the student group was willing to acknowledge an obligation to abide by that "Bill of Rights."

Against this background, the action of the Court in remanding on this issue is appropriate.

MR. JUSTICE DOUGLAS.

While I join the opinion of the Court, I add a few words.

As Dr. Birenbaum* says, the status quo of the college or university is the governing body (trustees or overseers), administrative officers, who include caretakers, and the police, and the faculty. Those groups have well defined or vaguely inferred values to perpetuate. The customary technique has been to conceive of the minds of students as receptacles for the information which the faculty have garnered over the years. Education is commonly thought of as the process of filling the receptacles with what the faculty in its wisdom deems fit and proper.

Many, inside and out of faculty circles, realize that one of the main problems of faculty members is their own re-education or re-orientation. Some have narrow specialties that are hardly relevant to modern times. History has passed others by, leaving them interesting relics of a bygone day. More often than not they represent those who withered under the pressures of McCarthyism or other forces of conformity and represent

*See the Appendix to this opinion.

but a timid replica of those who once brought distinction to the ideal of academic freedom.

The confrontation between them and the oncoming students has often been upsetting. The problem is not one of choosing sides. Students—who, by reason of the Twenty-sixth Amendment, become eligible to vote when 18 years of age—are adults who are members of the college or university community. Their interests and concerns are often quite different from those of the faculty. They often have values, views, and ideologies that are at war with the ones which the college has traditionally espoused or indoctrinated. When they ask for change, they, the students, speak in the tradition of Jefferson and Madison and the First Amendment.

The First Amendment does not authorize violence. But it does authorize advocacy, group activities, and espousal of change.

The present case is minuscule in the events of the 60's and 70's. But the fact that it has to come here for ultimate resolution indicates the sickness of our academic world, measured by First Amendment standards. Students as well as faculty are entitled to credentials in their search for truth. If we are to become an integrated, adult society, rather than a stubborn status quo opposed to change; students and faculties should have communal interests in which each age learns from the other. Without ferment of one kind or another, a college or university (like a federal agency or other human institution) becomes a useless appendage to a society which traditionally has reflected the spirit of rebellion.

APPENDIX TO OPINION OF DOUGLAS, J.

"A compulsory ghetto fails as a community because its inhabitants lack the power to develop common goals and to pursue them effectively together. It fails too

because of a fatal disconnection between the possession and use of power and the cognition that knowledge, as a form of power, carries with it political responsibility. In these respects the campus is now like the compulsory ghetto.

"Those who deplore a view of the university in terms of its powerful political role in American society must account for the institution's use of political power in its own terms, for its own purposes. I have come to feel lately—partly, I guess, because of the legal reasoning styles to which I have been exposed—that those playing around with the structure of their universities these days are playing with tinker toys. New committees, new senates and new student-participation formulae do not necessarily mean that anything has changed. Indeed, if Berkeley, Columbia, Harvard and Chicago are valid examples, restructuring turns out to be one of the brilliant new inventions for sustaining the status quo. The vested interests and essential privileges involved in current efforts to restructure the university have yet completely to surface. A substantial part of our melting iceberg is still below the waterline.

"That part of the student critique of the university which most deserves our attention bears upon what we teach, how we teach it, and the terms on which it is taught. One of the interesting things their critique points out is that our building programs, corporate investments, relationships to the immediate community and to the society, and our views of citizenship inside the university, all turn out to be projections and applications of what *we* call or have called education. Their critique suggests the perfectly absurd conclusion that there is a relationship between their long hair and our long war, between being a nurse and being a Negro, between the freshman political-science course and the pollution of fresh air, between education for freedom and

being free. Obviously, the contemporary American student activist is crazy.

"We have probably made a mistake by revealing to our students that there really is too much to know, and only one way to learn it—our way. They have come to accept this as gospel, and it has encouraged them to view curriculum development as essentially a sophisticated art of selection, interpretation and emphasis in which *they* have a vested interest. Understanding this, naturally they have begun to ask the key political questions bearing upon *our* vested interests and privileges: What experience and talent should be empowered to select? Who should be empowered to employ those who will interpret, and to deploy the wealth required to support the enterprise?

"Obviously the control over who will be kept out and over punishment-and-reward systems inside is extremely important. While our students still generally concede that the older adults who teach them may know something they don't, they are also asserting the uniqueness of their own experience, claiming that they may know something which those now in charge don't. They have returned to the kindergarten level to rediscover a principle long revered in American education—that the student plays a positive and active role, that he has something definite and essential to contribute to his own education.

"The young—suspended precariously in a society obsessed by Vietnam violence, race violence, crime violence and culture violence—are restating the eternal questions about education: What is important to learn, and how may people best learn together? Regarding these enduring questions, they are also asking the eternal question of a society which officially encourages its young to grow up free (even while keeping them in bondage), namely: Who shall judge? Regarding the problems

these questions suggest, academic tradition responds through an uptight delineation of jurisdictions and powers within the university.

"Today's campus disruptions were born in the years 1776 to 1787. Although the mind of Thomas Jefferson was anchored in the traditions of Heidelberg, Oxford, Paris, Bologna, Rome, Greece, the religions of the early Christians and the ancient Hebrews, minds like his transformed the old into something quite new, as in the case of his proposal for a university in Virginia. What was created then was not, of course, the latest thing, nor was it necessarily the Truth. But it was an adventure, a genuine new departure; unlike most of the institutions of learning we have created in this country since the Morrill Act—that is, most of our higher-education establishment.

"The traditions of the university in the West are anti- if not counter-revolutionary. Operating within these traditions, the university has produced revolutionary knowledge, but institutionally the uses of the knowledge have been directed mainly toward the confirmation of the status quo, particularly the political and cultural status quo. The themes of peace, integration, equality, freedom and the humane uses of knowledge are ones which traditionally fall beyond the purview of the university.

"But in principle the main themes of our society run counter to this deployment of knowledge. In spite of Vietnam, poverty, racism and the overbearing logic of our technology—in spite of Bedford-Stuyvesant—the main themes of our country, in principle, were and still are revolutionary. They are reflected in such questions as these: Can the revolutionary knowledge developed in the universities be used humanely, to conform with what Jefferson and his colleagues apparently meant? What

does equality mean, and whatever it meant or means, can we still achieve a version of it consistent with this adventure? Are reason and democracy really consistent? Is war in behalf of peace, given what we know now, realistic? Can Negroes who were once property suddenly become people? Are some genocides more decent than others, some cesspools more fragrant than others?

"In any event, I *know* that Bedford-Stuyvesant is crammed full of red-white-and-blue Americans. They really believe that we ought to practice what we preach, and that's the problem. We've oversold America to ourselves, and so many of my very good friends—looking at the street violence and the circuses in the courts and on the campuses—who believe we confront a deeply un-American phenomenon, who think we face a serious threat to American values, completely misread what is going on there. We face a vibrant, far-reaching reassertion of what this country claims, what it has always claimed it is." W. Birenbaum, Something For Everybody Is Not Enough 67–69, 248–249.

MR. JUSTICE REHNQUIST, concurring in the result.

While I do not subscribe to some of the language in the Court's opinion, I concur in the result that it reaches. As I understand the Court's holding, the case is sent back for reconsideration because respondents may not have made it sufficiently clear to petitioners that the decision as to recognition would be critically influenced by petitioners' willingness to agree in advance to abide by reasonable regulations promulgated by the college.

I find the implication clear from the Court's opinion that the constitutional limitation on the government's acting as administrator of a college differ from the limitations on the government's acting as sovereign to enforce its criminal laws. The Court's quotations from *Tinker*

v. *Des Moines Independent School District*, 393 U. S. 503, 506 (1969), to the effect that First Amendment rights must always be applied "in light of the special characteristics of the . . . environment," and from *Esteban* v. *Central Missouri State College*, 415 F. 2d 1077, 1089 (CA8 1969), to the effect that a college "may expect that its students adhere to generally accepted standards of conduct," emphasize this fact.

Cases such as *United Public Workers* v. *Mitchell*, 330 U. S. 75 (1947), and *Pickering* v. *Board of Education*, 391 U. S. 563 (1968), make it equally clear that the government in its capacity as employer also differs constitutionally from the government in its capacity as the sovereign executing criminal laws. The Court in *Pickering* said:

> "The problem in any case is to arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." 391 U. S., at 568.

Because of these acknowledged distinctions of constitutional dimension based upon the role of the government, I have serious doubt as to whether cases dealing with the imposition of criminal sanctions, such as *Brandenburg* v. *Ohio*, 395 U. S. 444 (1969), *Scales* v. *United States*, 367 U. S. 203 (1961), and *Yates* v. *United States*, 354 U. S. 298 (1957), are properly applicable to this case dealing with the government as college administrator. I also doubt whether cases dealing with the prior restraint imposed by injunctive process of a court, such as *Near* v. *Minnesota*, 283 U. S. 697 (1931), are precisely comparable to this case, in which a typical sanction imposed was the requirement that the group abandon its plan to meet in the college coffee shop.

Prior cases dealing with First Amendment rights are not fungible goods, and I think the doctrine of these cases suggests two important distinctions. The government as employer or school administrator may impose upon employees and students reasonable regulations that would be impermissible if imposed by the government upon all citizens. And there can be a constitutional distinction between the infliction of criminal punishment, on the one hand, and the imposition of milder administrative or disciplinary sanctions, on the other, even though the same First Amendment interest is implicated by each.

Because some of the language used by the Court tends to obscure these distinctions, which I believe to be important, I concur only in the result.